Cornell University ILR School

Cornell University ILR School
DigitalCommons@ILR

Board Decisions - NYS PERB

New York State Public Employment Relations Board (PERB)

5-8-1981

State of New York Public Employment Relations Board Decisions from May 8, 1981

New York State Public Employment Relations Board

Follow this and additional works at: https://digitalcommons.ilr.cornell.edu/perbdecisions

Thank you for downloading an article from DigitalCommons@ILR.

Support this valuable resource today!

This Article is brought to you for free and open access by the New York State Public Employment Relations Board (PERB) at DigitalCommons@ILR. It has been accepted for inclusion in Board Decisions - NYS PERB by an authorized administrator of DigitalCommons@ILR. For more information, please contact catherwood-dig@cornell.edu.

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact web-accessibility@cornell.edu for assistance.

State of New York Public Employment Relations Board Decisions from May 8, 1981

Keywords

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

Comments

This document is part of a digital collection provided by the Martin P. Catherwood Library, ILR School, Cornell University. The information provided is for noncommercial educational use only.

This article is available at DigitalCommons@ILR: https://digitalcommons.ilr.cornell.edu/perbdecisions/222

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of CITY OF MOUNT VERNON, Respondent, -and- POLICE ASSOCIATION OF THE CITY OF MOUNT VERNON, Charging Party.	#2A-5/8/81 BOARD DECISION AND ORDER CASE NO. U-4688

PHILIP C. SCARPINO, CORPORATION COUNSEL (GERALD C. STERNBERG, ESQ., of Counsel), for Respondent

RICHARD HARTMAN, ESQ., (REYNOLD A. MAURO, ESQ., of Counsel), for Charging Party

This case comes to us on the exceptions of the City of Mount Vernon (City) to the hearing officer's decision. Several of the exceptions challenge his evidentiary findings; two challenge rulings made by him during the course of the hearing; and one challenges his finding of a violation allegedly not charged. The exceptions are discussed below.

FACTS

William Cooke commenced employment with the City's Police Department in March 1973. Cooke became President of the Police Association of the City of Mount Vernon (Association) in January 1979. In that capacity he issued press releases which were critical of the Mayor. The press releases related to employee safety and other working conditions within the Police Department.

Throughout his employment and until January 4, 1980, Cooke worked rotating tours of duty, as do most other police officers in the department. His two predecessors as President of the Association were changed from rotating to 8:00 a.m. to 4:00 p.m. tours of duty at the time each became President. One was changed at his own request and the other agreed to the change at a meeting with the then Police Chief. Cooke never requested such change.

The contract between the parties provides as follows with respect to leave for Association business:

> "With the approval and agreement of the Police Commissioner, the President of the Association may be permitted a reasonable amount of time not to exceed sixteen (16) hours per week, to conduct Association business."

From the time he became President of the Association in January 1979, until January 4, 1980, Cooke took Association leave in eight-hour blocks (full tour of duty), usually two days in a row and usually in conjunction with his regular days off. The same practice was followed by his predecessors.

On January 4, 1980, Cooke was reassigned permanently from the rotating tour to an 8:00 a.m. to 4:00 p.m. tour of duty. On January 15, 1980, Cooke was notified that he would be limited to four hours leave during a tour, but could get permission for a longer period if Association business required it.

The Association filed a charge alleging that the City violated each of the four subdivisions of CSL §209-a.1 of the

Taylor Law by altering Cooke's duty schedule. No charge was filed with respect to the time limit placed on his Association leave nor was the charge ever amended to include it.

In the proceeding before the hearing officer, the City claimed that it changed Cooke's tour of duty because he had been abusing his Association leave. The claimed abuse, testified to by the Police Chief, was that Cooke: often took his two days of Association leave time in conjunction with his regular days off; often took the leave time during the 4:00 p.m. to 12:00 midnight or 12:00 midnight to 8:00 a.m. tours when there was no union business; did not put his leave requests in writing or include in his requests where he would be and a telephone number at which he could be reached even though he had been ordered to do so; and did not attend monthly meetings of the Tri-County Police Association.

The hearing officer concluded that the City's change in Cooke's tour of duty violated subdivisions (a) and (c) of the Taylor Law.[1] He also found the imposition of a four-hour limitation upon Cooke's Association leave to be a violation of these two subdivisions. The hearing officer held that the City's action was taken to retaliate against Cooke for issuing press releases, as Association President, critical of the Mayor. The

---

1] The hearing officer dismissed the allegations of violation of subdivisions (b) and (d). No exceptions were filed by the Association.

hearing officer rejected as pretextual the City's claim that its action was taken because Cooke was abusing his Association leave time. He further determined that Cooke's criticism of the Mayor, the real reason for the City's action, was protected by the Taylor Law.

In his decision and recommended order, the hearing officer ordered the City to cease and desist from interfering with, restraining, coercing or discriminating against its employees because of their exercise of rights protected by the Taylor Law. He further ordered, as affirmative remedies, restoration of Cooke to rotating tours of duty and rescission of that portion of a January 15, 1980 Police Department memorandum which limits Cooke to a maximum of four hours leave during a work tour for the conduct of Association business.

DISCUSSION

Having reviewed the record, we reject the City's exceptions to the hearing officer's evidentiary findings. The record shows that the hearing officer's findings are supported by the record evidence cited in his decision. They are also supported by further evidence in the record that from the time Cooke became President of the Association in January 1979, he made weekly requests for Association leave and received approval for them. The requests were made to and approved by the Deputy Chief, with the knowledge of the Chief. The only occasions on which Association leave was denied were when there was a shortage of officers on duty. The City offered no explanation of why it approved the

requests, yet it claims that the Association leave granted by it pursuant to these requests constituted an abuse by Cooke of Association leave. We affirm the hearing officer's finding that the reason given was a pretext. It is clear from the record that the City, knowing that Cooke preferred rotating tours, assigned him to the 8:00 a.m. - 4:00 p.m. tour to retaliate against him for engaging in the protected activities of publicizing complaints about working conditions.

The City's exception to the hearing officer's decision that its four-hour-per-day limitation on Cooke's Association leave violated the Taylor Law and his direction to rescind the limitation, are based upon the fact that this conduct was not charged as a violation. We find merit to this exception. Section 204.1 (c)(3) of this Board's Rules of Procedure requires that an improper practice charge contain:

> "A clear and concise statement of the facts constituting the alleged improper practice, including the names of the individuals involved in the alleged improper practice, the time and place of occurrence of each particular act alleged and the subsections of section 209-a of the Act alleged to have been violated."

Subdivision (d) of Rule 204.1 authorizes the Director of Public Employment Practices and Representation, or a hearing officer, to permit amendments to a charge. Our Rules thus deem the charge to be a pleading by which the charging party is bound. We, therefore, will not find an improper practice which is not alleged in a charge or a timely amendment thereto.

Accordingly, that part of the hearing officer's decision which found that the City violated the Taylor Law by imposing a four-hour-per-day limitation on Cooke's Association leave is not sustained and his recommended order relating thereto is not adopted. [2] His decision is affirmed in all other respects.

NOW, THEREFORE, WE ORDER that the City of Mount Vernon:

1. Cease and desist from interfering with, restraining, coercing or discriminating against its employees because of the exercise of rights protected by the Taylor Law.

2. Restore Cooke to rotating tours of duty.

3. Post notices in the form attached in places ordinarily used to communicate information to unit employees.

DATED: New York, New York
May 8, 1981

Harold R. Newman

Harold R. Newman, Chairman

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

2] The City's exceptions to the hearing officer's rulings made during the course of the hearing are rejected. An objection sustained by the hearing officer was to a question which inquired of the Police Chief whether he noticed any change in Cooke's ability to conduct Association business. Since this area cannot be of legitimate concern to an employer, it must be presumed to have been outside the Chief's normal observation. Moreover, as the alleged discrimination relates essentially to Cooke's personal preference for his former tour, the question is, in any event, irrelevant. The hearing officer's ruling is affirmed.

The other ruling sustained an objection to a question asked of the Police Chief as to why he made a record of Cooke's Association leave. Since the hearing record shows that the City did bring out its reason for keeping its record, we find that the City was not prejudiced by the hearing officer's ruling.

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 City of Mount Vernon will:

1. Not interfere with, restrain, coerce or discriminate against its employees because of the exercise of rights protected by the Taylor Law.
2. Restore William Cooke to rotating tours of duty.

CITY OF MOUNT VERNON
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.

6876

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of HILTON CENTRAL SCHOOL DISTRICT, Respondent, -and- HILTON SCHOOL EMPLOYEES' ASSOCIATION, Charging Party.	#2B-5/8/81 BOARD DECISION AND ORDER CASE NO. U-4887

DANIEL R. MOONEY, ESQ., for Respondent

GILBERT BIANCUCCI, for Charging Party

This matter comes to us on the exceptions of the Hilton Central School District (District) to a hearing officer's decision that it violated its duty to negotiate with the Hilton School Employees' Association (Association) in that it unilaterally contracted out its school lunch program and eliminated the jobs of eight food service helpers. The hearing officer determined that the unilateral conduct of the District violated its duty to negotiate in good faith and he ordered it, inter alia, to

> "offer reinstatement under their prior terms and conditions of employment to those employees terminated as a result of its subcontracting of the school lunch program, together with any loss of wages or benefits that they may have suffered by reason thereof...."

In support of its exceptions, the District argues that the hearing officer erred in that he failed to find that the parties had met and extensively negotiated the Association's demands, which demands did not deal with the District's right to

L. 6877

contract out its school lunch program, but only with the impact of that contract upon the food service helpers. According to the District, agreement with respect to the negotiation demands of the Association was not a precondition for its contracting out its school lunch program.

In the event of affirmance of the decision of the hearing officer, the District takes exception to his recommended order of reinstatement, together with the restoration of lost wages and benefits. In support of this exception, it argues that the eight food service helpers had been offered the choice of alternative employment with the District that would have involved no loss of wages or benefits, or employment with the subcontractor.

The District's first exception may be divided into two parts. Insofar as it argues that the Association's negotiation proposal dealt only with the impact of subcontracting and not with the District's right to subcontract, the District is contending that the Association waived its right to object to the District's decision to subcontract its school lunch program. This contention was dealt with by the hearing officer, who determined that there was no such waiver. We affirm his determination. The District understood the Association's negotiation position as precluding any subcontract until agreement was reached on the impact proposals. Insofar as the District argues that the Association's proposals were negotiated extensively, it is contending that its duty to negotiate in good faith has been satisfied. We have held that a public employer may take unilateral action where (1) negotiations are deadlocked, (2) there are compelling

reasons for the employer to act unilaterally at the time it does so, and (3) the public employer is willing to continue to negotiate the matter after making the unilateral change. Cohoes City School District, 12 PERB ¶3113 (1979). All three elements of this test must be present at the time of the unilateral action. Deer Park Union Free School District, 14 PERB ¶3028 (1981). The hearing officer correctly noted that the District did not argue that there was any compelling need to act when it did. Having reviewed the record, we find no evidence upon which such an argument could have been based.

For the reasons set forth herein, we affirm the findings of fact and conclusions of law of the hearing officer insofar as he determined that the District violated §209-a.1(d) of the Taylor Law by subcontracting work performed by its food service helpers to a private subcontractor. We do not, however, accept his proposed order in full. The record supports the contention of the District that the former food service helpers were offered alternative employment with it in which they would be paid the same wages and would retain all their benefits. We find that this offer would have provided alternative employment that was substantially equivalent to the eliminated positions. While the alternative employment was not altogether satisfactory to the employees, it reflected a good faith intention of the District to alleviate any hardship that the subcontract may have occasioned for the food service helpers. In these circumstances, we delete from the proposed order the requirement that the District reimburse the affected employees for lost wages and other benefits.

NOW, THEREFORE, WE ORDER the Hilton Central School District

1. to offer reinstatement as food service helpers, under their prior terms and conditions of employment, to those employees terminated as a result of its subcontracting of the school lunch program; and

2. to negotiate in good faith with the Hilton School Employees' Association concerning terms and conditions of employment.

DATED: New York, New York
May 7, 1981

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of PUBLIC EMPLOYEES FEDERATION, AFL-CIO, Respondent, -and- RAJ MURAGALI, M.D., Charging Party.	#2C-5/8/81 BOARD DECISION AND ORDER CASE NO. U-4626

ARNOLD W. PROSKIN, P.C., for Respondent

HINMAN, STRAUB, PIGORS & MANNING, P.C. (BARTLEY J. COSTELLO, ESQ. and BERNARD J. MALONE, ESQ., of Counsel), for Charging Party

This matter comes to us on exceptions of the charging party, Dr. Raj Muragali, to a hearing officer's decision dismissing her charge that the Public Employees Federation, AFL-CIO (PEF) violated its duty of fair representation toward her.

Dr. Muragali is a physician employed by the State of New York who is in a negotiating unit represented by PEF, but she is not a member of PEF. Her charge alleges that PEF agreed to an increase in hours of work of doctors and dentists from 35 to 40 a week, and that it misled "the membership" by providing it with incomplete and inaccurate information about this part of the proposed agreement when it submitted the proposed agreement for ratification by "the membership". The charge is not clear whether "the membership" referred to means the members of PEF or of the

negotiating unit.[1]

Had the hearing officer read the charge as merely alleging a refusal to furnish information about the proposed agreement to PEF members, she would, no doubt, have dismissed the charge for failure to state a cause of action on the ground that Muragali, a nonmember, had no standing to bring the charge alleging PEF's failure to satisfy its duty of fair representation to its members. Giving her the benefit of the doubt, however, the hearing officer interpreted the charge as alleging that PEF did not furnish complete and accurate information about the proposed contract to "unit members".

The hearing officer found that PEF furnished no information about the proposed contract to Muragali prior to the ratification vote.[2] The hearing officer reasoned that as Muragali

---

[1] The "membership" to which the proposed agreement was submitted for ratification was the PEF membership, but the charge also complains that PEF broke faith with "the members of the bargaining unit".

[2] The record shows (at p. 35):

> HEARING OFFICER: "...The stipulation is that PEF sent no information concerning the tentative contract to Dr. Muragali prior to the ratification. Is that agreed?"
>
> MR. PROSKIN: "Rather than that I would like to have it say PEF only sent information to members, the information of which we are talking about."
>
> HEARING OFFICER: "Off the record." (Discussion off the record.)
>
> HEARING OFFICER: "Is that agreed?"
>
> MR. COSTELLO: "Yes."

was given no information at all about the proposed contract, it follows that Muragali was not given misleading information. The remaining question is whether PEF was under any duty to furnish contract information to Muragali. The hearing officer held that, as a nonmember of PEF, Muragali was not entitled to participate in the ratification vote and similarly was not entitled to information concerning the details of the agreement prior to ratification.

During the course of the proceeding, PEF had moved to dismiss Muragali's charge because it did not state a cause of action in that she was not a member of PEF at the time the charged events occurred. Muragali reacted by moving to amend the charge by adding Dr. Cesar Torras, a PEF member, as charging party. The proposal to amend the charge was made more than four months after the events specified in the charge.[3] The hearing officer, therefore, denied the motion to amend on the ground that a complaint by Torras was time barred.

In support of her exceptions, Muragali argues the hearing officer erred (1) in not permitting the charge to be amended by the addition of Torras as a charging party, and (2) in failing to rule that PEF's duty of fair representation required it to furnish information about the details of the proposed settlement to all unit employees regardless of their right to participate in the ratification vote. Muragali does not contest the hearing officer's ruling that, as a nonmember of PEF, she was not entitled to

[3] Section 204.1(a)(1) of our Rules permits the filing of an improper practice charge within four months of the conduct complained about.

participate in the ratification vote, but, she asserts, she was nevertheless prejudiced by PEF's failure to furnish her with information concerning the proposed contract. She contends that if she had been furnished with such information before the ratification vote, she could have joined PEF in time to participate in the vote and could have tried to persuade her colleagues to vote against the agreement.

We affirm the decision of the hearing officer. She ruled correctly in denying the motion to amend the charge by adding Dr. Torras as a charging party. At the time the motion was made, an independent charge by Dr. Torras would not have been timely. The amendment of a charge is not permitted when its effect is to allege a new charge that is time barred.

The hearing officer also ruled correctly that PEF's duty of fair representation to Muragali did not include furnishing her with information about the proposed agreement prior to ratification. An employee organization may choose to make status reports during the course of negotiations at its meetings or in other communications to its members. Even if it chooses to do so, it is not obligated, in any event, to make such reports to nonmembers.[4] The description of a proposed agreement which is yet to be rati-

[4] Although an employee organization is not required to furnish status reports to nonmembers during the course of negotiations, it must nevertheless represent nonmembers fairly in those negotiations. There is no allegation that PEF failed to do so except insofar as the charge alleges that PEF did not provide nonmembers with information about the terms of the proposed agreement.

fied is such a status report. It is one that PEF may have obligated itself to make to members so as to afford them the opportunity to vote on the ratification of the proposed agreement. Nonmembers of PEF did not require that information because they were not authorized to vote on ratification. We reject Muragali's argument that she is entitled to that information so that she can decide when, if at all, she may wish to join the organization or to lobby PEF members. The information Muragali said she needed to decide whether to join PEF was not essential to the exercise of her right to join the organization and hence the failure of PEF to disclose that information to her did not interfere with, restrain or coerce her in the exercise of that right. Nor is the failure of PEF to issue that information to her an aspect of PEF's duty of fair representation toward her.

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, dismissed.[5]

Dated, New York, New York
May 8, 1981

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

[5] The material submitted by Muragali in support of her charge suggests that PEF may have furnished misleading information about the proposed agreement to PEF members. An employee organization need not furnish information about a proposed agreement to nonmembers, but it may not furnish misleading information to nonmembers or to members. Inasmuch as the record establishes that no misleading information was furnished to Muragali and the charge does not deal with PEF members, we do not consider this issue.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of WHITESBORO CENTRAL SCHOOL DISTRICT, Respondent, -and- WHITESBORO EMPLOYEES UNION, Charging Party.	#2D-5/8/81 BOARD DECISION AND ORDER CASE NO. U-4971

DRANOFF, DAVIS, KRUSE, RESNIK & FIELDS, ESQS.
(RAYMOND G. KRUSE, ESQ., of Counsel), for Respondent

RICHARD L. BRUCE, for Charging Party

This matter comes to us on the exceptions of the Whitesboro Employees Union (Union) to a hearing officer's decision granting the motion of the Whitesboro Central School District (District) to dismiss a charge on the ground that the evidence presented at the hearing by the charging party did not establish a prima facie case. The charge alleged that the District violated §209-a.1(a), (b) and (c) of the Taylor Law when it transferred Helen Uhl, the Union's president, from a private office to one that she shared with two other employees. The hearing officer determined that there was no evidence that Uhl's transfer was improperly motivated.

Uhl had spent about 2-1/2 hours a week conducting union business from her private office for four years until the change, which was made in July, 1980. When she complained that the change interfered with her union activities, Uhl was given use of other private space as needed for those activities.

The sole evidence in support of the proposition that this office reassignment was improperly motivated was Uhl's testimony about what Saponari, her immediate supervisor, told her. According to Uhl, Saponari told her that she had been placed in the new office because it afforded him an opportunity to keep her under constant surveillance and that this was done because she was the union president.

The hearing officer was not persuaded by this testimony. First, he noted that the evidence was hearsay testimony which, assuming its accuracy, was still not persuasive because Saponari did not testify, thus the District had no opportunity to cross-examine him. In this connection, he noted that Saponari's employment status with the District was not such as would make his statement an admission by the District that would constitute an exception to the hearsay rule. Wholly apart from the technical considerations of the rules of evidence, the hearing officer did not credit the testimony of Uhl. He noted that Saponari had not been employed by the District until after Uhl's office reassignment and it was, therefore, likely that he did not know the reason for that reassignment. He also noted that there was no mention in the charge or at the pre-hearing conference that Uhl had been assigned to a new office in order to permit greater surveillance of her by Saponari.

In its exceptions, the Union argues that the hearing officer erred in dismissing the charge without having required the District to present its defense because there is no authorization in this Board's Rules for such a dismissal.

We affirm the decision of the hearing officer. The record supports the hearing officer's finding that Uhl's testimony was not persuasive. Among other things, she testified that her desk had been located in her new office at a spot where Saponari could see her from his desk and that Saponari told her that he was under direct instructions from Dr. Love, the superintendent of the District, and Mr. Haessig, its business administrator, to keep her under constant surveillance. Nevertheless, Uhl testified that when she moved her desk to a spot in the new room where she could not be seen by Saponari, she was never told to move it back. In the absence of evidence that Uhl was reassigned for improper reasons, the hearing officer properly dismissed the charge because the Union had not presented a prima facie case.[1]

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

DATED: New York, New York
May 8, 1981

Harold R. Newman

Harold R. Newman, Chairman

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

6888

1 While §204.7(1) of the Rules is, as the Union argues, restricted to dismissal of a charge because it is not timely, §204.7(h) authorizes a hearing officer to rule on other motions as well. §204.2(a) of the Rules provides that no hearing need be held where a charge does not set forth a prima facie case. It follows that no further hearing need be held where the evidence presented by a charging party does not set forth a prima facie case.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of SCHUYLERVILLE CENTRAL SCHOOL DISTRICT, Respondent, -and- SCHUYLERVILLE TEACHERS ASSOCIATION, NYSUT, AFT, AFL-CIO, Charging Party.	#2E-5/8/81 BOARD DECISION AND ORDER CASE NO. U-4212

McPHILLIPS, FITZGERALD, MEYER & McLENITHAN
(RICHARD E. McLENITHAN, ESQ., of Counsel),
for Respondent

JOHN THOMAS TRELA, for Charging Party

This matter comes to us on the exceptions of the Schuylerville Central School District (District) to a hearing officer's decision that it violated its duty to negotiate in good faith with the Schuylerville Teachers Association, NYSUT, AFT, AFL-CIO (Association) by unilaterally reducing the work year and annual compensation of guidance counselors. The exceptions also complain about the remedial order of the hearing officer.

FACTS

In May 1979, without prior negotiations, the District reduced the work year and compensation of guidance counselors. Guidance counselors had worked 12 months a year previously. Under the new schedule, they worked a 10-month schedule and an additional 20 days during July and August. Their annual salaries were cut to those provided in the 10-month teacher salary schedule, plus per diem pay for the extra 20 days of work. The District was

willing to negotiate the impact of the cut in time and salary. There is no evidence in the record regarding any reduction of the workload of guidance counselors or any curtailment of guidance services to the school.

On these facts, the hearing officer concluded that the District did not negotiate in good faith. He determined that an allegation relating to reduced workload and the curtailment of services is not an essential element of the Association's prima facie case, but is in the nature of an affirmative defense to be proven by the District. Accordingly, he found that no defense had been made to the Association's proven prima facie case. The District was ordered by the hearing officer to negotiate in good faith with the Association, to make the guidance counselors whole for losses occasioned by the change in their work year, plus interest of three percent (3%), and to restore the 12-month work year of the guidance counselors.

In its exceptions, the District challenges the hearing officer's determination that there was a burden of proof upon it concerning the issue of a reduction of workload and the curtailment of services. Among other things, it notes that the charge alleged that the guidance counselors' workload was not reduced when their work year was. According to the District, there was a burden upon the Association to prove this specification of their charge. It notes that its answer contained no affirmative defense which it might have to prove, but only a general denial of the allegations of the charge.

The District argues further that an order directing good faith negotiations is inappropriate because the evidence shows that it had been willing to negotiate the impact of its unilateral change. It also argues that a back pay order is inappropriate because the parties were subject to a collectively negotiated agreement throughout the period in question and the matter of salaries should, therefore, have been resolved through grievance arbitration.

DISCUSSION

We affirm the decision of the hearing officer for the reasons stated in his opinion. The inclusion in the charge of an allegation that workload and service were not curtailed does not enlarge the scope of the prima facie case which the Association had to prove. A public employer may, for good business reasons, reduce the services that it provides to the public. Such a good faith reduction in services may justify the public employer in reducing its employees' workload with a commensurate reduction in salaries. Whether or not such a purpose is present is in the nature of an affirmative defense necessarily to be made by the employer.

The leading case involving a reduction in the work year and salaries is Oswego City School District, 5 PERB ¶3011 (1972), aff'd Oswego v. Helsby, 42 AD2d 262 (Third Dept., 1973), 6 PERB ¶7008 (1973). In that case we found that the Oswego City School District violated its duty to negotiate in good faith when it cut the work year and salaries of administrators because the

record was "barren of any proof that the subject change was made to curtail or limit services to the public." Here, too, the absence of evidence on this issue is held against the District.

We accept the hearing officer's proposed order. Although the District was willing to negotiate impact, it violated its duty to negotiate in good faith when it reduced the work year and annual salaries of the guidance counselors without having negotiated the reductions. It should be ordered to negotiate in good faith. We also reject the District's argument that we should not order back pay because the parties were subject to a collective bargaining agreement which covered salaries and, therefore, the matter of back pay should be left to the grievance procedure. The conduct of the District may or may not have constituted a contract violation, but it is the District's improper practice which directly caused the loss of income of guidance counselors. Civil Service Law §205.5(d). It is appropriate that we order the District to make the guidance counselors whole for this loss of income.

NOW, THEREFORE, WE ORDER the Schuylerville Central School District to:

1. Negotiate in good faith with the Association with respect to terms and conditions of employment of unit employees.
2. Make the guidance counselors whole for any loss of salary or benefits occasioned by the change in their work year with interest on any sum owing at the rate of three percent (3%) per year calculated from the effective date of the change.

3. Restore the guidance counselors' work year as it existed immediately prior to the change effected in May 1979.

4. Post notices in the form attached in each location ordinarily used to post notices of interest to unit employees.

DATED: New York, New York
May 8, 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 Schuylerville Central School District will:

1. Negotiate in good faith with the Schuylerville Teachers Association, NYSUT, AFL-CIO, with respect to terms and conditions of employment of unit employees.

2. Make the guidance counselors whole for any loss of salary or benefits occasioned by the change in their work year with interest on any sum owing at the rate of three percent (3%) per year calculated from the effective date of the change.

3. Restore the guidance counselors' work year as it existed immediately prior to the change effected in May 1979.

...SCHUYLERVILLE CENTRAL SCHOOL DISTRICT.....
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 COUNTY OF SCHENECTADY AND SHERIFF, Joint Employer, -and- SCHENECTADY COUNTY SHERIFF'S BENEVOLENT ASSOCIATION, Petitioner, -and- SCHENECTADY COUNTY CHAPTER, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., Intervenor.	#3A-5/8/81 Case No. C-2064

AMENDED CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

By agreement among the parties, the certification issued in this matter on April 22, 1981, is hereby amended to read as follows:

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, Civilian Enforcement Officer, Physician's Assistant, Cook, Senior

6895

Typist and Account Clerk/Typist (as well as CETA employees holding any of these positions).

Excluded: Sheriff, Under-Sheriff, Major and per diem Court officers.

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.

Dated, New York, New York
May 7, 1981

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
LYNBROOK UNION FREE SCHOOL DISTRICT, Employer,	:	#3B-5/8/81
-and-	:	
LYNBROOK SCHOOL SECRETARIES ASSOCIATION, Petitioner,	:	Case No. C-2150
-and-	:	
LYNBROOK CSEA CLERICAL ASSOCIATION, NASSAU EDUCATIONAL LOCAL 865, 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

Lynbrook School Secretaries 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 full-time and part-time clerical employees.

Excluded: All others.

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

Lynbrook School Secretaries 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 8th day of May, 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

6897

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK,	:	#3C-5/8/81
Employer,	:	
-and-	:	Case No. C-2216
DISTRICT COUNCIL 37, LOCAL 372, AFSCME, AFL-CIO,	:	
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

District Council 37, Local 372, AFSCME, AFL-CIO

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: School Food Program Assistant (CETA).

Excluded: All others.

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

District Council 37, Local 372, AFSCME, AFL-CIO

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 8th day of May, 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

6898

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of NIAGARA FRONTIER TRANSPORTATION AUTHORITY, Employer, -and- GREAT LAKES DISTRICT, I.L.A., INTERNATIONAL LONGSHOREMEN'S ASSN., AFL-CIO, Petitioner.	#3D-5/8/81 CASE NO. C-2212
In the Matter of NIAGARA FRONTIER TRANSPORTATION AUTHORITY, Employer, -and- DIVISION 1342, AMALGAMATED TRANSIT UNION, Petitioner.	CASE NO. C-2219

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 Great Lakes District, I.L.A., International Longshoremen's Association, AFL-CIO

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:

See Attached

Excluded:

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Great Lakes District, I.L.A., International Longshoremen's Association, AFL-CIO

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 8th day of May, 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

6899

Included: All clerical office personnel including:

Mail & Supply Clerk, Contract Compliance Spec., Clerk Typist, Receptionist, Minority Business Enterprise Spec., Sr. Community Relations Spec., Account Clerk, Artist Designer, Community Relations Spec., Associate Engineer, Clerk, Planning Technician, Sr. Account Clerk, Stenographer, Principal Project Account Clerk, Stores Clerk, Purchase Clerk, Engineer Technician, Payroll Clerk, File Clerk, Sr. Artist Designer, Principal Account Clerk, Computer Operator, Senior Stenographer, Public Information Officer, Environmental Spec., Transportation Analyst, Community Services Aide, Sr. EEO Coordinator, Budget & Cost Analyst, Administrative Assistant, Asst. Auditor, Auditor, Sr. MBE Coordinator, Assistant to Office Engineer, Data Base Management Specialist, Maintenance Technicain, Computer Program Analyst, Sr. Account Asst., Secretary (Engineering Dept.), Construction Scheduler.

Excluded:

Operations Eng. III, Office Engineer, Systems Engineer I, Systems Engineer II, Area Engineer, Sr. Stenographer (Employee Relations), Systems Engineer III, Sr. Area Engineer, Executive Secretary (Executive Director), Project Engineer II, Design Engineer III, Sr. Stenographer (Secretary to General Counsel), Secretary to Senior Associate Counsel, Project Engineer III, Supervisor of Records, Executive Secretary (Comptroller), Executive Secretary (Gen. Mgr. Metro Construction Division), Clerk-Typist (Mgr. Niagara Falls Airport), Sr. Stenographer (Gen. Mgr. Greater Buffalo International Airport), Stenographer (Deputy Comptroller), Associate Accountant, Clerk-Typist (Director Operations & Director Administration & Finance), Senior Stenographer (Gen. Mgr. Marine Division), Design Engineer II, Executive Secretary (Chairman), and all other employees.