6-19-1981

State of New York Public Employment Relations Board Decisions from June 19, 1981

New York State Public Employment Relations Board

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Keywords
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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2C-6/19/81
BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF BUFFALO, Employer,	BOARD DECISION AND ORDER
-and-	CASE NO. C-2136
BUFFALO BOARD OF EDUCATION PROFESSIONAL, CLERICAL AND TECHNICAL EMPLOYEES' ASSOCIATION, CHAPTER A, Petitioner,	
-and-	
LOCAL 264, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, Intervenor.	

JOSEPH P. MC NAMARA, ESQ., for the Employer

SARGENT & REPKA, PC. (NICHOLAS J. SARGENT, ESQ., of Counsel), for Petitioner

GORSKI & MANIAS, ESQS. (JEROME C. GORSKI, ESQ., of Counsel), for Intervenor

This matter comes to us on the exceptions of the Buffalo Board of Education Professional, Clerical and Technical Employees' Association, Chapter A (Association), to a decision of the Director of Public Employment Practices and Representation (Director) dismissing the petition for certification as representative of a unit of 50 cook managers employed by the Board of Education of the City School District of the City of Buffalo (District).[1/] For over 13 years,

1/ The District filed cross-exceptions. They are discussed in Footnote 2.

the cook managers have been in a unit of 400 blue-collar workers represented by Local 264, American Federation of State, County and Municipal Employees (Intervenor).

In support of its petition, the Association merely alleged that the cook managers were supervisors. It neither alleged nor introduced any evidence to show any conflict between them and other unit employees at any time during the long history of joint representation. The petition was opposed both by the Intervenor and the District, both of which contended that cook managers were not supervisory employees. The District also asserted that fragmentation of the unit would be administratively inconvenient for it, but it introduced no evidence in support of this position.

The Director found that the cook managers were supervisors,[2/] but he did not grant the petition. Indicating that they would have been placed in a separate unit had their unit placement been presented to him as a de novo issue, he ruled that the long history of joint representation of cook managers along with other unit employees without any evidence of conflict established a community of interest which was sufficient to continue the existing unit.

2/ In support of its cross-exceptions the District argues that the Director erred in concluding that the cook managers are supervisory employees because they cannot take final action in personnel matters. This is not the test applied by the Director. He correctly determined that it is sufficient for employees to be designated supervisors if they make meaningful recommendations on personnel matters, and the evidence indicates that cook managers do so. Although the supervision exercised by the cook managers over the other food service employees is of a low level, the Director correctly found them to be supervisors.

The petitioner makes two alternative arguments in support of its exceptions. It argues for a per se rule requiring the placement of supervisors in a unit apart from rank-and-file employees unless there is agreement among all concerned parties. Alternatively, it argues that supervisors should be placed in a separate unit unless those who object to such a unit present evidence showing special circumstances that would justify the inclusion of supervisors in a unit with rank-and-file employees.

DISCUSSION

Two policies come into conflict in the instant case. One is to establish separate negotiating units for rank-and-file employees and their supervisors whenever a party in interest objects to a combined unit;[3/] the other is to retain long-standing negotiating units where the community of interest among the groups of employees that constitute the unit is established by the absence of evidence of any conflict of interest among them.[4/] When trying to reconcile these two policies, we must consider the statutory standards for defining negotiating units on which they are based.

3/ Johnson City Central School District, 1 PERB ¶399.55(1968), and N.Y. State Thruway, 1 PERB ¶399.81 (1968). But see City of Binghamton, 9 PERB ¶3022 (1976) in which we said that low level supervisors need not be given separate negotiating units.

4/ Town of Smithtown, 8 PERB ¶3015(1975) and Rockland County, 10 PERB ¶3014 (1977).

The relevant statute is §207.1 of the Taylor Law. It specifies the standards to be considered in defining a negotiating unit as:

> "(a) the definition of the unit shall correspond to a community of interest among the employees to be included in the unit;
>
> (b) the officials of government at the level of the unit shall have the power to agree, or to make effective recommendations to other administrative authority or the legislative body with respect to, the terms and conditions of employment upon which the employees desire to negotiate; and
>
> (c) the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public."

Even before the first case came before this Board, it issued an interpretation of the standards in an introduction to its Rules of Procedure which were first published in October 1967, as follows:

> "(a) Community of interest - This is a most significant element that must be considered in determining the appropriate unit in a particular case. The following will be important in this regard: whether the employees sought to be grouped together are subject to common working rules, personnel practices, environment or salary and benefit structure. A helpful question to ask might be whether any real conflict of interest exists among the employees in the proposed unit;
>
> (b) Power to reach agreement - Briefly, this means that the public employer who would ordinarily deal with the proposed unit should have the power to act effectively concerning the terms and conditions of employment to be negotiated;
>
> (c) Responsibilities to the public - The proposed unit must be compatible with the joint responsibilities of the public employer and the employees to serve the public. This criterion means that a proposed negotiating unit might be inappropriate if its structure and composition were found to interfere with providing a service to the public.

> It takes into consideration the administrative convenience of the employer and perhaps suggests that an excessive number of units might be undesirable. On the other hand, too large a unit might be unwieldy for the negotiation of all possible issues." (emphasis in the original)

The awareness that different groups of employees may share a community of interest with respect to some terms and conditions of employment but have conflicting interests with respect to others was articulated by this Board in State of New York, 1 PERB, ¶399.85 (1968), when it applied the first statutory standard by balancing the elements of community and conflict of interest. This approach was confirmed by the Appellate Division, Third Department, 32 App. Div. 2d 131, 2 PERB ¶7007 (1969), affirmed 25 NY 2nd 842, 2 PERB ¶7013 (1969).

Applying the first standard to the facts before us, we find evidence of a community of interest between the cook managers and the other food service employees as reflected by the fact that they have been represented in a single unit for over thirteen years, and no evidence of any conflict of interest to balance against this community of interest. Thus, while our a priori assumption would have been that the conflict of interest between the cook managers and the other food service employees predominates over their community of interest, the evidence indicates otherwise. Accordingly, we determine that the unit defined by the director satisfies the first statutory standard.[5/]

5/ See fn 4. The relatively low level of the supervisory functions of the cook managers gives greater support to this determination.

The second statutory standard is not relevant to the issue before us.[6/]

As indicated in the introduction to the initial publication of this Board's Rules, the third standard takes into consideration the administrative convenience of the employer and suggests that an excessive number of units is undesirable.[7/] The source of this interpretation of the third standard is the 1966 Report of the Governor's Committee on Public Employee Relations (page 27-8) which is the basis of the Taylor Law. It, too, was applied by this Board in State of New York, supra, and endorsed by the courts in their confirmation of this Board's decision. Public employers frequently request the separation of their supervisors and rank-and-file employees for negotiation purposes on the ground that their administrative convenience requires such a separation. The basis for such a request is the employers' concern that effective supervision may be subverted if supervisors have to turn to a union that is dominated by rank-and-file employees to maintain or improve their terms and conditions of employment. Invariably, we have granted such requests.[8/] However, where a public employer has not complained that a negotiating unit including both supervisors and rank-and-file employees would cause it

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6/ The application of this standard is to multi-employer units. See Rensselaer County, 3 PERB ¶3100 (1970) and Orange County, 14 PERB ¶3012 (1981).

7/ In Village of Hempstead, 1 PERB ¶399.99 at 3254 (1968), this Board said that "unwarranted fragmentation should be avoided." The same point was made in State of New York, 1 PERB ¶399.85 (1968).

8/ Auburn City School District, 1 PERB ¶399.69 (1968), and Binghamton City School District, 10 PERB ¶3062 (1977).

administrative difficulties, we have accepted such units[9] unless there is evidence that the conflict of interest between the groups of employees predominates over their community of interest.[10] Here, the public employer explicitly asserts that its administrative convenience would be served by the continuation of the existing combined unit. Accordingly, we determine that the unit defined by the Director satisfies the third statutory standard.

NOW, THEREFORE, we affirm the decision of the Director, and WE ORDER that the petition herein be, and it hereby is, dismissed.

DATED: Albany, New York
June 18, 1981

Harold R. Newman

Harold R. Newman, Chairman

David C. Randles

David C. Randles, Member

9/ East Irondequoit Central School District, 1 PERB ¶399.66 (1968), and Rensselaer County, 3 PERB ¶3100 (1970).

10/ City of Binghamton, 9 PERB ¶3022 (1976), and Town of Huntington, 11 PERB ¶3003 (1978).

Board Member Klaus concurring:

I concur in the result on the ground that there is no evidence that the supervisors have dominated or controlled the structure or leadership of the unit or the administration of its affairs. Compare my dissent in East Ramapo CSD, 11 PERB ¶3075 (1978). Nor is there a showing that the supervisors have not been adequately represented in the unit.

DATED: Albany, New York
June 18, 1981

Ida Klaus

Ida Klaus, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-6/19/81

In the Matter of :

CITY OF WHITE PLAINS :

BOARD DECISION AND ORDER

Upon the Application for Designation of Persons as Managerial or Confidential. :

CASE NO. E-0637

RAINS & POGREBIN, ESQS., (PAUL J. SCHREIBER, ESQ., of Counsel), for the City of White Plains

ROEMER & FEATHERSTONHAUGH, ESQS., (WILLIAM M. WALLENS, ESQ., of Counsel), for the White Plains Unit of the Civil Service Employees Association, Inc.

The proceeding herein was commenced by the City of White Plains (City) on November 30, 1979, when it filed an application for the designation of employees holding certain titles as managerial or confidential in accordance with the criteria set forth in §201.7(a) of the Taylor Law. The matter comes to us on the exceptions of the White Plains Unit of the Civil Service Employees Association, Inc. (CSEA) to a decision of the Director of Public Employment Practices and Representation (Director) that employees holding two of the positions are managerial and employees holding two other positions are confidential.[1/]

1/ In addition to the four employees whose designation as managerial and confidential is contested, the Director determined that thirteen other employees were managerial or confidential. He also determined that seven employees covered by the City's application were neither managerial nor confidential. No exceptions were filed with respect to any of these determinations and we do not consider them.

The four positions in question and the incumbent employees are:

Superintendent of Water (Amadio): held to be Managerial

Account Manager-Public Works (Rescigno): held to be Confidential

Assistant Library Director (Szabo): held to be Managerial

Assistant to the Library Director (Gilson): held to be Confidential

The exceptions present no issue of law. The standards applied by the Director are those set forth in the statute and interpreted in the prior decisions of this Board and they are not challenged by either party. What is challenged is whether the Director applied those standards properly to the facts.

Having reviewed the record, we determine that it supports the decision of the Director. Accordingly, we affirm his findings of fact and conclusions of law.

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

DATED: Albany, New York
June 19, 1981

Harold R. Newman

Harold R. Newman, Chairman

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-6/19/81

In the Matter of :

CITY OF BUFFALO, :
Respondent, : BOARD DECISION AND ORDER

-and- :

BUFFALO POLICE BENEVOLENT ASSOCIATION, : CASE NO. U-5127

Charging Party. :

JOSEPH P. MC NAMARA, ESQ. (ANTHONY C. VACCARO, ESQ., of Counsel), for Respondent

SARGENT & REPKA (NICHOLAS J. SARGENT, ESQ., of Counsel), for Charging Party

This matter comes to us on the exceptions of the City of Buffalo (City) to the decision of a hearing officer that it violated its duty to negotiate in good faith with the Buffalo Police Benevolent Association (PBA) in that it unilaterally altered the work schedules of policemen.

Prior to December 16, 1980, policemen employed by the City of Buffalo worked on one of three shifts. One shift covered the hours of 8:00 a.m. to 4:00 p.m. The other two were rotating shifts. On alternating days a rotating shift would work from Midnight to 8:00 a.m., have eight hours off, and work again from 4:00 p.m. to Midnight followed by 24 hours off, This was known as a "doubling back" schedule. The effect of the "doubling back" schedule was that the same number of policemen would work the Midnight to 8:00 a.m. and the 4:00 p.m. to Midnight time span.[1/]

1/ The term 'time span' is used in this decision to denote the three periods of time: Midnight to 8:00 a.m., 8:00 a.m. to 4:00 p.m., and 4:00 p.m. to Midnight.

On November 21, 1980, PBA wrote to the Police Commissioner requesting an opportunity to negotiate as to changes in work schedules. However, without prior negotiation, the Police Commissioner issued a general order on December 16, 1980, in which he eliminated the two rotating tours of duty and replaced them with two fixed tours of duty: one covering the Midnight to 8:00 a.m. time span and the other covering the 4:00 p.m. to Midnight time span. He also issued assignment lists on a precinct by precinct basis which showed more policemen assigned to the 4:00 p.m. to Midnight time span than to the Midnight to 8:00 a.m. time span. By their terms, the new schedules were to take effect on Sunday, January 4, 1981.

PBA filed the charge herein before the contemplated date for the commencement of the new schedules, and they had not been implemented as of the time the record in this case was closed. It was the position of the City, however, that it would put the new schedules into effect "at such time as the Commissioner deems appropriate".

The hearing officer determined that by changing "doubling back" rotating schedules to fixed schedules, the City violated its duty to negotiate in good faith by changing the actual hours of work of policemen. Noting the right of the City to determine unilaterally the number of policemen it requires for each time span, she nevertheless ordered the City to rescind its general order, to reinstitute the rotating platoons and to negotiate with PBA any change in working hours of the policemen.

In support of its exceptions, the City argues that its right to vary the number of employees on duty during the different time spans relieves it of any obligation to negotiate its change in the scheduling of employee work shifts.[2/] It finds support for this position in a recent decision of this Board involving the same parties, Buffalo Police Benevolent Association, 13 PERB ¶3084 (1980). In that decision, we ruled nonmandatory a demand of PBA that the City continue existing contract language providing:

> "Except for emergency situations, as declared by the Commissioner of Police, work shift schedules shall not be changed by the Commissioner of Police unless the changes are mutually agreed upon."

PBA responds that the City misinterprets the earlier Buffalo decision. It views that decision as holding that it could not compel the City to continue the prior shift schedules because those schedules precluded the City from making a unilateral determination as to the number of policemen who should be on duty at any given time. According to PBA, the prior Buffalo decision does not permit the City to determine unilaterally the hours of work of policemen because the City is not required to do so in

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2/ It also argues that the general order was promulgated but never implemented. The implication of this would appear to be that the PBA's charge was premature. Finally, it argues that PBA made no specific negotiation proposals but merely indicated a desire to negotiate the subject of shift schedules. The implication of this is that absent a specific negotiation proposal there was nothing for it to negotiate.

These arguments are not persuasive. The promulgation of the general order on December 16, 1980, changed the hours of work of the policemen, the implementation of the general order merely being a ministerial act. The absence of a specific proposal by PBA is not a defect in its position. It is not

order to determine the number of policemen who must be on duty during each time span.[3/]

We affirm the decision of the hearing officer. The situation in the earlier Buffalo case is distinguishable from that before us now. In the earlier case, PBA presented a demand that would have frozen the number of policemen on duty at given times thereby interfering with the City's unilateral right to determine its manpower needs during those particular times. Here, the employer has gone beyond the determination of its manpower needs during different time spans. It has precluded PBA from negotiating actual hours of work within the limits of those needs and to the extent that the hours would not be inconsistent with those needs. To the extent that the City has done so, it has acted unilaterally as to a mandatory area of negotiation.

As there have been no negotiations on the subject of hours and the City has not demonstrated any compelling need for action pending negotiations, the hearing officer's order that it reinstate the prior schedule should be affirmed.

2/(cont.'d) necessary for a party to formulate precise demands in order to compel negotiations. White Plains Professional Firefighters Association, 11 PERB ¶3089(1978). In any event, PBA cannot have been expected to formulate a precise demand concerning the working hours of policemen because the City did not inform it of the number of policemen who would be required during the three time spans.

3/ The sole exception to the City's duty to negotiate, according to PBA, occurs when an employer is under a compelling need to take immediate action and its participation in past negotiations and willingness to continue further negotiations satisfy the guarantees of Wappinger, 5 PERB ¶3074(1972).

NOW, THEREFORE, WE ORDER the City of Buffalo to:

1) rescind the general order of December 16, 1980, and to restore the past practice of rotating platoons if it was changed;

2) negotiate with the PBA any change in working hours; and,

3) post a notice in the form attached at all locations ordinarily used for communication with its police officers.

DATED: Albany, New York
June 19, 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: the City of Buffalo:

1) will rescind the general order of December 16, 1980 and will restore the past practice of rotating platoons if it was changed, and

2) will negotiate with the PBA any change in working hours.

.....
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 YOI
PUBLIC EMPLOYMENT RELATI .IS BOARD

In the Matter of	:	#3A-6/19/81
JEFFERSON COUNTY AND JEFFERSON COUNTY SHERIFF, Joint Employer,	:	
-and-	:	Case No. C-2063
JEFFERSON COUNTY DEPUTY SHERIFFS' ASSOCIATION, INC., Petitioner,	:	
-and-	:	
JEFFERSON COUNTY CHAPTER OF THE 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

JEFFERSON COUNTY DEPUTY SHERIFFS' ASSOCIATION, INC.

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 and dispatcher-matrons.

Excluded: Sheriff, Undersheriff and all others

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

JEFFERSON COUNTY DEPUTY SHERIFFS' ASSOCIATION, INC.

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 18th day of June , 1981
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

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PERB 58.4

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
METROPOLITAN SUBURBAN BUS AUTHORITY,	:	#3B-6/19/81
Employer,	:	
-and-	:	Case No. C-2204
LOCAL 252, TRANSPORT WORKERS UNION OF AMERICA, 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

LOCAL 252, TRANSPORT WORKERS UNION OF AMERICA, 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: All console operators employed in the Bus Command Center by MSBA

Excluded: All others

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

LOCAL 252, TRANSPORT WORKERS UNION OF AMERICA, 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 18th day of June , 1981
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

PERB 58.3

6968

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
TOWN OF GATES (HIGHWAY DEPARTMENT),	:	#3C-6/19/81
Employer,	:	
-and-	:	Case No. C-2235
CHAUFFEURS, TEAMSTERS & HELPERS LOCAL UNION #118,	:	
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

CHAUFFEURS, TEAMSTERS & HELPERS LOCAL UNION #118

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: Laborer I, II and III, Mechanical Equipment Operator I, II and III, Mechanic, Account Clerk, and Foreman

Excluded: Superintendent of Highways and all other employees

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

CHAUFFEURS, TEAMSTERS & HELPERS LOCAL UNION #118

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 18th day of June , 1981
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

PERB 58.3

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