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State of New York Public Employment Relations Board Decisions from July 23, 1981

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from July 23, 1981

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NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-7/23/81

In the Matter of :

TEAMSTERS LOCAL 317, an affiliate of the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF
AMERICA, :

BOARD DECISION
AND ORDER

CASE NO. D-0213

Respondent, :

upon the Charge of Violation of Section 210.1
of the Civil Service Law. :

On April 13, 1981, Martin L. Barr, Counsel to this Board, filed a charge alleging that Teamsters Local 317, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Local 317), had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the Onondaga County Water Authority (Authority) on February 20, 21, and 22, 1981.

The charge further alleges that on Friday, February 20, 56 of the 69 employees in the negotiating unit represented by Local 317 who were scheduled to work, absented themselves. On Saturday, February 21, all three scheduled employees were absent. On Sunday, February 22, two of the three scheduled employees were absent.

Local 317 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 an indefinite suspension of Local 317's dues and agency shop fee deduction privileges, if any, with permission to Local 317 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 Local 317 violated CSL §210.1 in that it engaged in a strike as charged.

This is a second strike by Local 317, the first being a three-day one in 1979 for which a five month penalty was imposed. We therefore determine that the recommended penalty is a reasonable one and furthers the policies of the Act.

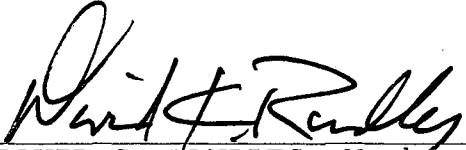
WE ORDER that the dues deduction and agency shop fee privileges, if any, of Teamster Local 317, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, be suspended indefinitely, commencing on the first practicable date, provided that it may apply 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 govern-

ment as required by the provisions of CSL §210.3(g).

DATED: Albany, N.Y.
July 23, 1981



IDA KLAUS, Member



DAVID C. RANDLES, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-7/23/81

In the Matter of :
:
:
SOMERS CENTRAL SCHOOL DISTRICT : BOARD DECISION AND ORDER
:
Upon the Application for Designation of Persons as Managerial or Confidential : CASE NO. E-0678
:
:

STEYER & SIROTA, ESQS., for Somers
Central School District

PAT LEONETTI, for Somers School Related
Personnel, NYSUT, AFL-CIO

On October 16, 1980, the Somers Central School District (District) applied for the designation of Augustine Mortola as confidential in accordance with the criteria set forth in §201.7(a) of the Taylor Law. Mortola had been working as a part-time bookkeeper for the District since May 1, 1980 and his position was in a negotiating unit represented by the Somers School Related Personnel (Association). The Association opposed the application and a hearing was held on December 11, 1980, eleven days after Mortola had become a full-time bookkeeper for the District.

The Director of Public Employment Practices and Representation (Director) determined that Mortola works for the business administrator of the District and, in that capacity, has worked on the preparation of a preliminary budget, thus exposing him to anticipated changes in personnel and services that may have a considerable impact upon the labor relations of the District. The Director further found that Mortola's duties include the financial analysis of negotiation proposals that will necessarily expose

him to the various responses or approaches that the District will consider during negotiations. Based on these findings, the Director concluded that Mortola is a confidential employee.

The matter now comes to us on the exceptions of the Association. It bases its exceptions on the fact that Mortola has not yet had occasion to analyze the financial implications of negotiation proposals and contends that an employee cannot be designated confidential except on the basis of work that he has already performed.

This contention of the Association is based upon a misreading of §201.7(a) of the Taylor Law and City of Binghamton, 12 PERB ¶3099 (1979). In Binghamton, we noted that §201.7(a)

"distinguishes between employees who may be designated as managerial if they 'may reasonably be required...' to perform certain managerial functions, and employees who 'may be designated as confidential only if they are persons who assist or act in a confidential capacity....'"

The Association erroneously understands this language as permitting the designation of employees as confidential only if they have already performed confidential functions. The correct understanding of §201.7(a) and of Binghamton is that an employee may be designated confidential if the confidential duties are already part of the employee's job description, even if confidential assignments have not yet been performed because there has not yet been any occasion for him to have performed them. Such is the situation in the case before us. As of the date of the hearing, Mortola had not performed his duty of analyzing data for negotiations because the District had not been in negotiations since the time that he was first employed. His job duties, however, specifically require him to analyze such data when needed.

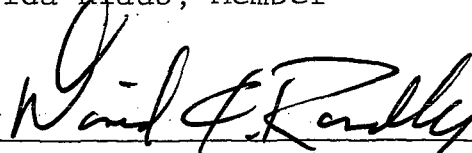
We further note that Mortola would have been properly designated confidential even if the duties of his position did not include the financial analysis of negotiations proposals. As found by the Director, Mortola had already been, and he will continue to be, engaged in preparing budgets, which responsibility exposes him to information about anticipated changes in personnel and services. This work is reason enough for his designation as confidential. In City of White Plains, 14 PERB ¶3052 (1981), we affirmed a decision of the Director (City of White Plains, 14 PERB ¶4024 [1981]), holding an employee to be confidential because that employee "is privy to information, such as possible reductions in personnel, transfers and layoffs, which have, or may have, a considerable impact on labor relations."

NOW, THEREFORE, WE affirm the decision of the Director, and
WE designate Augustine Mortola a confidential
employee of the Somers Central School District.

DATED: Albany, New York
July 23, 1981



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

_____ : #2C-7/23/81
In the Matter of :
NORWICH CITY SCHOOL DISTRICT, : BOARD DECISION AND ORDER
Respondent, : CASE NOS. U-4663 & U-5124
-and- :
NORWICH EDUCATORS ORGANIZATION, :
Charging Party. :
_____ :

MATTHEW FLETCHER, ESQ., for Respondent
JOHN B. SCHAMEL, for Charging Party

This matter comes to us on the exceptions of the Norwich Educators Organization (NEO) to a hearing officer's decision dismissing two charges that it filed against the Norwich City School District (District). The first charge, filed on April 18, 1980, alleged that the District violated paragraphs (a), (b), (c), and (d) of §209-a.1 of the Taylor Law in that it engaged in negotiations with individual unit employees. The second charge, filed on December 18, 1980, alleged that the District violated paragraphs (a), (c) and (d) of §209-a.1 of the Taylor Law in that it unilaterally changed the terms and conditions of employment of unit employees after the negotiations with individual employees complained about in the first charge. The two charges were consolidated for consideration by the hearing officer. The unit consists of both teachers and department chairmen and the charges complain that the District increased the amount of time that department chairmen spent observing teachers, while reducing the

amount of time that they spent on their own teaching responsibilities. According to NEO, the District's action changed the terms and conditions of employment of both the department chairmen and the teachers.

FACTS

After discussions with the four department chairmen, the District revised their job description and changed their job duties. The change was to reduce the daily classroom teaching assignments of the department chairmen from 5 to 4, and to require the chairmen to devote the time saved to classroom observations of the techniques used to present the school curriculum and to the recording of those observations. The department chairmen were instructed that their observations should be descriptive and not judgmental, that is, they were to describe the teaching methods used by the teachers, but not to evaluate the effectiveness of the instruction. They were also told to discuss their observations with the teachers and to obtain the teachers' signatures on the observation reports. It is the contention of NEO that the conduct of the District unilaterally changed terms and conditions of employment of both the department chairmen and the teachers. The terms and conditions of employment of the department chairmen were changed, according to NEO, in that they were relieved of teaching responsibilities and required to perform alternative duties as a consequence of this change. The terms and conditions of employment of teachers were also changed, according to NEO, in that they were subjected to additional evaluation procedures by the District.

The hearing officer determined that the alleged changes in the working conditions of department chairmen and the teachers were not changes at all. The basis of this finding was the fact that during prior years department chairmen's teaching assignments fluctuated, as did the amount of time they spent on classroom observations, the time for each type of assignment being determined unilaterally by the District. The hearing officer further concluded that, even if not consistent with past practice, the action of the District would not have been violative of its obligation to negotiate in good faith because it did not involve a mandatory subject of negotiation. She determined that the changes effected by the District did not alter the essential nature of the duties of department chairmen and, citing Waverly, 10 PERB ¶3103 (1977), and Oyster Bay, 12 PERB ¶3086 (1979), she ruled that it is a management prerogative to vary the assignments of employees as long as the changes in their assignments do not alter the essential character of their positions. Similarly, she concluded that the observations conducted by the department chairmen did not alter the terms and conditions of employment of the teachers because those observations did not, as alleged by NEO, change the process of teacher evaluation. Finally, the hearing officer determined that the conduct of the District did not violate paragraphs (a), (b), or (c) of §209-a.1 of the Taylor Law in that it was not intended to interfere with any of the rights of unit employees to organize or be represented in collective negotiations. Rather, according to the hearing officer, the

change effected by the District was "motivated by legitimate educational concern to improve the curriculum."

DECISION

In support of its exceptions, NEO argues that the hearing officer erred in that she failed to find that the District changed the workload and the working hours of department chairmen as well as the procedures for evaluating teachers. It also argues that the hearing officer should have concluded that the conduct of the District violated paragraphs (a), (b) and (c) of §209-a.1 of the Taylor Law because the discussions with the individual department chairmen were inherently disruptive of their rights of organization and negotiation.

Having reviewed the record, we affirm the findings of fact and conclusions of law of the hearing officer. The Waverly and Oyster Bay decisions upon which she relied are distinguishable from the holding of Scarsdale, 8 PERB ¶3075 (1975), that it is not a management prerogative to assign employees work that is alien to the essential character of their position.^{1/} The change in the assignments of the department chairmen was not so substantial as to come within the holding of Scarsdale, but is governed by Waverly and Oyster Bay.

1/ Scarsdale involved the assignment of automobile repair work to policemen.

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

DATED: Albany, New York
July 23, 1981

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
WATERVLIET HOUSING AUTHORITY, : #3A-7/23/81
Employer, :
-and- : Case No. C-2121
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., :
LOCAL 1000, 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 Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO 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: Senior typist (assistant), typist, maintenance laborer, and maintenance mechanic (foreman)

Excluded: Executive director

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Civil Service Employees Association, Inc., Local 1000, 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 23rd day of July , 1981
Albany, New York

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

7006

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
COUNTY OF NIAGARA AND SHERIFF OF NIAGARA : #3B-7/23/81
COUNTY, :
Joint Employer, :
-and- : Case No. C-2255
NIAGARA COUNTY DEPUTY SHERIFF'S ASSOCIATION, :
Petitioner, :
-and- :
DEPUTY SHERIFF'S UNIT, CSEA, LOCAL 832, :
LOCAL 1000, AFSCME, AFL-CIO, :
Intervenor. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that

Niagara 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 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 deputized personnel of the Sheriff's Department including: matrons, jailors, deputies and investigators

Excluded: Sheriff, clerical and maintenance employees

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

Niagara 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 23rd day of July , 1981
Albany, New York

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #3C-7/23/81
SOUTHERN CAYUGA CENTRAL SCHOOL DISTRICT, :
Employer, :
-and- : Case No. C-2178
CAYUGA COUNTY LOCAL 806, CIVIL SERVICE :
EMPLOYEES ASSOCIATION, INC., LOCAL 1000, :
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 Cayuga County Local 806, Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO 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.

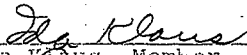
Unit: Included: All regular full-time and part-time employees in the following titles: typist, senior typist, clerk, account clerk, senior account clerk, senior account clerk typist, senior stenographer, food service helper, cook, custodian, cleaner, head maintenance man, bus driver, library aide, teacher aide and auto mechanic

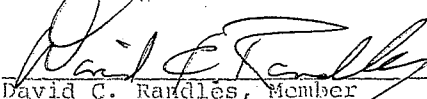
Excluded: Senior stenographer (secretary to the superintendent), head custodian, student workers, casual, temporary or substitute employees

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Cayuga County Local 806, Civil Service Employees Association, Inc., Local 1000, 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 23rd day of July, 1981
Albany, New York


Ida Klaus, Member


David C. Randles, Member