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

New York State Public Employment Relations Board

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

Keywords

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#1A-10/23/81

In the Matter of

COUNTY OF NASSAU (DEPARTMENT OF DRUG AND ALCOHOL ADDICTION),

Respondent,

-and-

NASSAU COUNTY CHAPTER OF THE CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Charging Party.

BOARD DECISION AND ORDER

Case No. U-4328

EDWARD G. McCABE, ESQ. (JACK OLCHIN, ESQ., of Counsel), for Respondent

RICHARD M. GABA, ESQ. (BARRY J. PEEK, ESQ., of Counsel), for Charging Party

This matter comes to us on the exceptions of the County of Nassau on behalf of its Department of Drug and Alcohol Addiction, respondent herein, to a hearing officer's decision determining that it violated its duty to negotiate in good faith with the Nassau County Chapter of the Civil Service Employees Association, Inc., the charging party.

For six years Nassau County's Department of Drug and Alcohol Addiction (Department) rented space in a privately owned building. The lease provided for twenty reserved on-premises parking spaces which were allotted to employees of the Department on the basis of job responsibility and seniority. Subsequent to

the execution of the lease, the lessor made additional free parking available to employees of the Department at a nearby garage which it owned.

This situation came to an end on October 1, 1979, when the Department moved its offices to other privately owned premises. The new lease provided for twenty-two on-premises parking spaces which were allotted as before. Neither respondent nor the new leasor made arrangements for free parking by those employees of the Department to whom on-premises parking spaces were not made available.

The charging party complained to the respondent that the loss of free parking constituted a unilateral change in their terms and conditions of employment and it demanded that respondent negotiate as to the loss of the free parking. Respondent answered that it would not do so because, in its opinion, parking facilities for unit employees on privately-owned premises is not a term and condition of employment.[1/]

1/ Although these events took place during the term of a collective bargaining agreement between respondent and charging party, the record does not show that the agreement dealt with the subject of free parking for Department employees or that the matter had been considered during negotiations. Accordingly, the applicable rule is as stated in New Paltz CSD, 11 PERB ¶3057, at p. 3088:

> Notwithstanding the existence of an agreement, there is a duty to negotiate over mandatory subjects of negotiations not covered by the agreement unless there is an explicit waiver.

Charging party then filed the charge herein in which it complained that respondent violated §209-a.1(d) both by refusing to negotiate a mandatory subject of negotiation and by taking unilateral action with respect to that subject. The hearing officer determined that free parking is a mandatory subject of negotiation. In doing so, he cited the decision of this Board in State of New York, 6 PERB ¶3005 (1973), in which we held that "the availability of free parking is a term and condition of employment . . .". Finding that respondent refused to negotiate the subject, he determined that it violated Section 209-a.1(d) of the Taylor Law.

The hearing officer dismissed the specification of the charge alleging a unilateral change by respondent. He found that it was not respondent that made the change in the Department's employees' free parking privileges. It had not arranged for free parking for most of these employees in the Department before it moved its office and did not arrange for free parking for them after the move. As the hearing officer said, the free parking enjoyed by the Department's employees was not an emolument of their employment, but a privilege arising outside the employment relationship.

Respondent takes exception to so much of the hearing officer's decision as holds that it refused to negotiate a mandatory subject of negotiation. It would distinguish State of New York on the ground that the State had initiated a charge for parking in a lot that was owned or leased by it, while the instant case

involves a parking fee charged by parking lots over which respondent has no control. The distinction proposed by respondent is not a persuasive one. The availability of free parking while at work is a mandatory subject of negotiation because it is an economic benefit to the employees similar to the use of an employer's vehicle for commuting to and from work[2/] and the furnishing by an employer of working tools.[3/]

NOW, THEREFORE, WE AFFIRM the decision of the hearing officer, and

WE ORDER the County of Nassau to negotiate the demand of the Nassau County Chapter of the Civil Service Employees Association, Inc., that free parking be made available to employees of the Department of Drug and Alcohol Addiction.

Dated, New York, New York
October 23, 1981

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

2/ See Oyster Bay, 14 PERB ¶3002 (1981).

3/ See Nassau Chapter CSEA v. Helsby, 54 AD2d 725 (Second Dept., 1976).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of BEACON CITY SCHOOL DISTRICT, Respondent, -and- BEACON TEACHERS ASSOCIATION, Charging Party.	#1B-10/23/81 BOARD DECISION AND ORDER CASE NO. U-5025

THOMAS P. HALLEY, ESQ., for Respondent

ARTHUR L. LAVALETTE, JR., for Charging Party

This matter comes to us on the exceptions of the Beacon City School District (District) to a decision of a hearing officer that it violated its duty to negotiate in good faith with the Beacon Teachers Association (Association). The violation consisted of requiring physical education teachers who were hired after September 1, 1980, to accept the responsibility for two coaching assignments. The physical education teachers are in the negotiating unit represented by the Association.

Through the 1979-80 school year, the District satisfied its coaching needs by appointing volunteers, who were paid pursuant to a negotiated schedule. The coaching duties were performed after regular school hours. Finding it difficult to get a sufficient number of volunteers, the District unilaterally adopted a new policy and procedures on July 28, 1980, which requires physical education teachers who would be hired after September 1, 1980, to accept two coaching assignments in the event that quali-

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fied volunteers are not forthcoming.[1/] As before, the coaching duties would be performed after regular school hours and the coaches would be compensated at the negotiated rate. The Association protested the District's unilateral action and, when the District refused to rescind it, the Association filed the charge herein.

The hearing officer concluded that the imposition of coaching assignments upon the physical education teachers was a mandatory subject of negotiation and that the District's unilateral action had, therefore, constituted a violation of §209-a.1(d) of the Taylor Law. To remedy its violation, the hearing officer directed the District to rescind the procedure adopted in July 1980, to compensate coaches who did not volunteer for work at an hourly rate to be calculated on the basis of their annual salary and to negotiate in good faith with the Association. In its

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1/ In pertinent part, the rules adopted on July 28, 1980 provide:

> "Effective September 1, 1980, all persons receiving probationary appointments to Physical Education teaching positions in the Beacon School District shall be...required to sign a 'Condition of Employment Statement' which will require the appointee to coach a maximum of two sports during the school year under the following circumstances:
>
> > 'If after postings, media advertisements and other reasonable efforts fail to obtain adequate numbers of qualified applicants to properly fill all coaching openings, physical education teachers subject to this Policy will be required to serve in coaching capacities for which, in the judgement of the Director of Athletics, feels they are qualified.' (sic)
>
> ....In the event that the number of qualified candidates exceeds the position(s) available, a physical education teacher may be temporarily excused from coaching at the discretion of the Director of Athletics."

exceptions, the District argues that the requirement that newly hired teachers accept coaching assignments was merely a qualifications for their employment and, therefore, not a mandatory subject of negotiation. It also argues that the hearing officer erred in awarding the coaches anything more than the negotiated rate of pay.

We affirm the decision of the hearing officer. The assignment of coaching responsibilities after the regular school day involves the hours of work of unit employees and is a mandatory subject of negotiation. CSL §201.4. The District is, therefore, prohibited from acting unilaterally regarding this matter, but must negotiate it with the Association, the representative of the physical education teachers. CSL §204.2. It is not excused from such negotiations by reason of the "condition of Employment Statements" executed by individual physical education teachers on the occasion of their being hired. As the hearing officer noted, an obligation to accept coaching responsibilities is not in the nature of a qualification for employment because it is not related to the employee's ability to perform his job.[2/] It is a term and condition of their continuing employment and not

---

[2/] See Nassau Chapter CSEA v. Helsby, 54 AD2d 725 (2d Dept., 1976), 9 PERB ¶7022, in which the Appellate Division determined that a requirement unilaterally imposed by the employer that newly hired auto mechanics must furnish their own hand tools was not a qualification for employment.

merely a condition for becoming an employee.[3/] The distinction between the two was well noted by the hearing officer, who said:

> "An individual's agreement that he will work hours in excess of those otherwise prevailing for as long as he holds a position under threat of termination for non-compliance is no more performance-related than a requirement that he work for a predetermined wage for as long as he stays on the job."

Thus we find that the District committed an improper practice by giving physical education teachers coaching assignments pursuant to its policy of July 28, 1980.

We affirm the hearing officer's determination that the District should compensate each coach who did not volunteer on the basis of an hourly rate computed from his annual salary and applied to the hours spent coaching. As noted by the hearing officer, the contract rate for coaching is applicable only to those who volunteer for the coaching responsibilities. Work performed because of an improper compulsory assignment should not be compensated at less than the employee's regular rate.

NOW, THEREFORE, WE DETERMINE that the District violated §209-a.1(d) of the Taylor Law, and

WE ORDER IT:

1. Immediately to rescind and cease enforcement of the athletic coaching policy and

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3/ The distinction between a condition for being offered employment and a condition of employment has been made by Michigan (Detroit Police Officers Association v. Detroit, 291 Mich. 44, 85 LRRM 2536 [Mich. Sup. Ct., 1974]); Wisconsin (City of Brookfield v. WERC, 87 LRRM 2099 [Wisc. Cir. Ct., 1974]); and Massachusetts (Boston School Teachers Committee, 3 MLC 1602 [Mass. Labor Commission, 1977]). The courts or agencies of the three states have held that, while a public employer is free to require residency within the community as a condition for being employed by it, it must negotiate the subject of a continuing residency requirement for the employees after they are hired. The same distinction is not applicable in New York State only because Public Officers Law, §30, specifically makes a residency requirement continually applicable to employees to whom it was applicable when they were hired. Salamanca, 12 PERB ¶3079 (1979).

regulations issued pursuant thereto in July 1980;

2. Immediately to rescind and cease enforcement of any agreements made by individuals pursuant to either the policy or regulations above;

3. To pay to any employees assigned coaching duties pursuant to the policy or regulations above a sum to equal the total wages due at the hourly rate of the applicable annual salary for the hours worked in the performance of the assigned duties, less moneys received therefor, with interest on this sum at the rate of three percent per annum calculated from the date of each employee's first performance of the assigned duties;

4. To negotiate in good faith with the BTA the salaries, hours, and other terms and conditions of employment of employees represented by the BTA;

5. To post a signed notice in the form attached at all locations in the District ordinarily used to post notices of information to unit employees.

DATED: October 23, 1981
New York, New York

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 Beacon City School District will:

1) Immediately rescind and cease enforcement of the athletic coaching policy and regulations issued pursuant thereto in July 1980;

2) Immediately rescind and cease enforcement of any agreements made by individuals pursuant to either the policy or regulations above;

3) Pay to any employees assigned coaching duties pursuant to the policy or regulations above a sum to equal the total wages due at the hourly rate of the applicable annual salary for the hours worked in the performance of the assigned duties, less moneys received therefor, with interest on this sum at the rate of three per cent, per annum calculated from the date of each employee's first performance of the assigned duties;

4) Negotiate in good faith with the Beacon Teachers Association (BTA) salaries, hours, and other terms and conditions of employment of employees represented by the BTA.

BEACON CITY 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 VILLAGE OF FAIRPORT, Charging Party, -and- FAIRPORT POLICE BILLY CLUB, Respondent.	#1C-10/23/81 BOARD DECISION AND ORDER Case No. U-5508

HARRIS, BEACH, WILCOX, RUBIN AND LEVEY, ESQS. (PETER J. SPINELLI, ESQ., of Counsel), for Charging Party

GARY VAN SON, ESQ., for Respondent

The Fairport Police Billy Club (Club) represents a unit of patrolmen and sergeants in the Police Department of the Village of Fairport (Village). They were in negotiations for a collective bargaining agreement to succeed one that expired on May 3, 1981, when, on June 6, 1981, the Club petitioned for interest arbitration, pursuant to §209.4 of the Taylor Law. Among the negotiation demands specified in the petition was one for a 20-year, half-pay retirement benefit. The Village then filed the charge herein in which it alleges that the Club violated its duty to negotiate in good faith by seeking the retirement benefit in interest arbitration.

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The Village does not argue that the retirement demand is a non-mandatory subject of negotiation.[1/] The Village contends

1/ On the contrary, it concedes that the retirement benefit sought is one that is made available by Section 384-d

that it was improper for the Club to seek it in interest arbitration because the scope of arbitration is narrower than the scope of mandatory negotiations. The basis for this contention is that under New York State Constitution, Art. 5, §7, a grant to employees of retirement benefits is irrevocable, while §209.4(c)(vi) of the Taylor Law provides that the determination of a public arbitration panel shall not bind the parties for a period in excess of two years. The Village argues that an arbitration panel's determination would bind the parties for more than two years and would, therefore, be beyond its authority under the Taylor Law.

The Village acknowledges that this Board has rejected the identical argument in Town of Haverstraw, 12 PERB ¶3085 (1979) and it is asking us to overrule the prior decision.[2/] Along with the Club, it requests that we expedite resolution of the dispute pursuant to §204.4 of our Rules by dispensing with the intermediate decision of the hearing officer. Inasmuch as it is beyond the authority of a hearing officer to overrule a decision of this Board, we grant the joint request of the parties and apply the expedited procedure of Rule 204.4.

Having considered the briefs of the parties, we find no legal arguments that persuade us to do other than to reaffirm the legal

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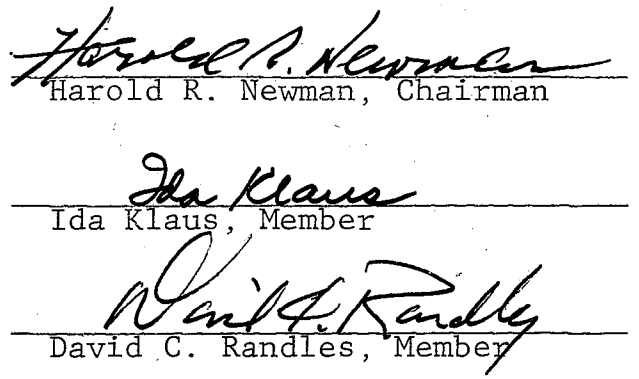
1/ (continued)
of the Retirement and Social Security Law. According to Chapter 25 of the Laws of 1975, as last amended by Chapter 381 of the Laws of 1981, such a demand is a mandatory subject of negotiation.

2/ Our decision was affirmed by the Supreme Court in Haverstraw v. Newman, 13 PERB ¶7008 (Rockland Co., 1980) and an appeal to the Appellate Division, Second Department, is pending.

principles stated in Haverstraw[3/] including the proposition of law that the scope of interest arbitration is coextensive with the scope of negotiations.[4/]

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

DATED: October 22, 1981
New York, New York



Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

[3/] In that decision, we stated:

> "The purpose of the two-year limitation, as we understand it, was to permit the relationship of the parties to a deadlock in negotiations to survive the absence of an agreement during the deadlock period while preserving their duty to negotiate their own terms and conditions of employment thereafter. There is no indication that the Legislature intended the two-year limitation to restrict the arbitration of retirement benefits....Had the Legislature wished to do so, it could have enacted a law creating a narrower scope of arbitration than the scope of negotiation as it was fully aware of the irrevocable nature of such benefits.

[4/] In City of Albany, 7 PERB ¶3078 (1974), this Board resolved a related question. In a case involving, inter alia, a demand for improved retirement benefits, we held that the scope of negotiation of police and firefighter disputes was not narrowed as a consequence of the availability of interest arbitration to resolve deadlocks. The courts confirmed this decision. City of Albany v. Helsby, 48 AD2d 998 (3rd Dept., 1975), 8 PERB ¶7012, affirmed 38 NY2d 778 (1975), 9 PERB ¶7005.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of PENFIELD CENTRAL SCHOOL DISTRICT Upon the Application for Designation of Persons as Managerial or Confidential	#1D-10/23/81 BOARD DECISION AND ORDER CASE NO. E-0730

HARRIS, BEACH, WILCOX, RUBIN & LEVEY, ESQS. (MARY J. HARRINGTON, of Counsel), for Applicant.

SALOME P. HAMAKER for PENFIELD ASSOCIATION OF EDUCATIONAL SECRETARIES, Intervenor.

This matter comes to us on the exceptions of the Penfield Central School District (District) to a Decision of the Director of Public Employment Practices and Representation (Director) denying in part the District's application for the designation of Diane Fishel (Fishel), the District's Assistant to the Business Manager, and Dorothy Dubois (Dubois), the District's Treasurer, as confidential employees.[1/]

The exceptions of the District, in summary, claim that the determination of the Director with respect to Fishel and Dubois does not comport with the facts or the law. Considerable effort is expended by the District seeking to demonstrate that the data available to Fishel and Dubois is exempt from the provisions of the Freedom of Information Law, therefore rendering the data confidential and consequently warranting the designation of the personnel working with such data as confidential.

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1/ The District applied for the designation of eleven clerical employees as confidential pursuant to Civil Service Law §201.7(a). The Director granted the application with respect to seven employees. The exceptions of the District relate to two of the four employees for whom the Director denied the application.

Having reviewed the record, we affirm the factual findings of the Director and his ultimate conclusions that Fishel and Dubois are not "confidential" employees within the intendiment of Civil Service Law (CSL) §201.7(a).

Under the facts of this record it is immaterial to our determination whether the data available to Fishel and Dubois qualifies for exemption under the Freedom of Information Law. The testimony of the Business Manager establishes that while he inquires of Fishel and Dubois as to revenues, unencumbered balances, and expenditures, he reserves to himself the making of such analysis as will permit projections concerning the availability of funds for negotiation purposes. Both Fishel and Dubois denied having been told that the data they retrieved was to be used in negotiations or having been involved in the development or formulation of negotiation policy or proposals. Being in a position to speculate as to the conclusions that might be drawn from the financial data they abstract from the records for the Business Manager does not constitute the performance of confidential functions which warrants their designation as "confidential" employees under CSL § 201.7(a).[2/]

2/ In Binghamton, 12 PERB ¶3099 (1979), we noted that CSL §201.7(a) prescribes that a managerial employee is one who may be reasonably required to perform managerial functions, while a confidential employee is one who actually performs confidential functions.

NOW, THEREFORE, WE ORDER that the Decision of the Director in this matter be, and it hereby is, affirmed.

DATED: New York, New York
October 23, 1981

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF SARATOGA SPRINGS, Employer, -and- SARATOGA TRANSPORTATION EMPLOYEES ASSOCIATION, Petitioner, -and- SARATOGA SPRINGS SCHOOL DISTRICT TRANSPORTATION EMPLOYEES UNIT OF THE SARATOGA COUNTY EDUCATIONAL CHAPTER OF THE CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 8456-1, Intervenor.	#1E-10/23/81 BOARD DECISION AND ORDER CASE NO. C-2138

THEODORE GREY, ESQ., for Employer

GARY C. JOHNSON, ESQ. (DORSEY, LeCAIN & MORRIS, ESQS., of Counsel by JOHN O. LeCAIN, ESQ.), for Petitioner

ROEMER AND FEATHERSTONHAUGH, ESQS. (RICHARD L. BURSTEIN, ESQ., of Counsel), for Intervenor

This matter comes to us on the exceptions of Saratoga Springs School District Transportation Employees Unit of the Saratoga County Educational Chapter of the Civil Service Employees Association, Inc., Local 8456-1 (CSEA) to a decision of the Director of Public Employment Practices and Representation (Director). The Director determined that the Saratoga Transportation Employees Association (STEA), the petitioner herein, is an

employee organization, and that it may participate in an election in a stipulated unit of bus drivers and mechanics employed by the Enlarged City School District of the City of Saratoga Springs (District).

Until July 1977, the District employed bus drivers and mechanics, who were part of an overall non-instructional negotiating unit represented by CSEA. At that time, over CSEA's objections, the District entered into a contract with the Upstate Transport Consortium, Inc. (UTC), a private business, pursuant to which UTC would provide transportation services to the District. UTC then hired most, if not all, of the drivers and mechanics who worked for the District.

CSEA filed an improper practice charge protesting that the District violated its duty to negotiate in good faith by entering into the contract with UTC. We found merit in the charge and ordered the District to offer reinstatement to its former drivers and mechanics. Saratoga Springs School District, 11 PERB ¶3037 (1978). The District appealed the decision and it was confirmed by the Appelate Division of the Supreme Court. Saratoga Springs City School District v. PERB, 68 AD2d 202 (3d Dept., 1979) 12 PERB ¶7008. The course of litigation ended in July 1979 when the Court of Appeals denied the District's motion for leave to appeal and the District rehired its former employees. Saratoga Springs City School District v. PERB, 47 NY2d 711, 12 PERB ¶7012 (1979).

CSEA represented the drivers and mechanics during the two years they worked for UTC and it continued to do so when they were rehired by the District. However, unlike the situation during their previous District employment, the drivers and mechanics are now represented in a separate negotiating unit.

During the two years they worked for UTC, the drivers and mechanics received benefits in the areas of health and disability insurance, leaves of absence, retirement and job security that were greater than those they had received when employed by the District. When the District resumed operation of its transportation services and rehired them, the drivers and mechanics lost the improved benefits that UTC had provided. They therefore preferred to work for UTC. When negotiations commenced in May 1980, pursuant to a wage reopener, they urged CSEA to include the subject of subcontracting in the negotiations. CSEA refused and, on September 22, 1980, the drivers and mechanics met and voted overwhelmingly to form their own organization if CSEA would not support their position on subcontracting. They met again on September 29, at which time they further discussed their dissatisfactions with CSEA, some of which were unrelated to subcontracting, and they adopted a resolution to seek its decertification unless it would support their position on subcontracting. In preparation for a meeting on October 27, the leadership group drew up a proposed constitution for a new organization.

The complaints of the drivers and mechanics about CSEA at the October 27 meeting no longer focused upon the subcontracting issue. Instead, the discussion dealt with a general dissatis-

faction with CSEA and the unit employees' preference for an independent organization to represent them. Changes in the draft constitution were discussed and, as changed, it was adopted in principle. The organization was given a name, an interim president was elected, and the decision was made to seek certification for the new organization. The petition herein was filed two weeks later. Thereafter, the proposed constitution was prepared and submitted to the membership who ratified it on January 9, 1981. Permanent officers were then elected.

The District raised no question regarding the petition. CSEA intervened and asserted that STEA was not an employee organization within the meaning of the Taylor Law[1/] at the time it filed the petition. The Director determined that STEA was an employee organization and he ordered that there be an election in the unit of drivers and mechanics in which the choices to be offered to the employees would include STEA.

The matter now comes to us on the exceptions of CSEA in support of which it argues that the Director erred in his findings of fact and conclusions of law.

The Director determined that the drivers' and mechanics' adoption of a name for STEA, their election of an interim president and their discussion of a constitution were sufficient

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1/ As relevant to the issue before us, §201.5 of the Taylor Law defines an employee organization as "an organization of any kind having as its primary purpose the improvement of terms and conditions of employment of public employees...."

indicia of the existence of STEA as an employee organization on October 27, 1980.[2/] He further determined that STEA was an employee organization within the meaning of the Taylor Law in that it seeks to represent drivers and mechanics who are currently public employees and to improve their terms and conditions of employment through negotiations under the Taylor Law.

We affirm the Director's findings of fact and conclusions of law.

NOW, THEREFORE, WE ORDER that a secret ballot election be held among employees in the following unit, stipulated by the parties, who are employed on the payroll date immediately preceding this decision:

Included: Transportation Personnel

Excluded: Transportation Supervisor, Dispatcher, Chief Executive Officer, Central Office managerial and confidential employees, employees in other bargaining units and employees

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2/ See State of New York, 10 PERB ¶3092 (1977), in which we found the Public Employee Federation to be an employee organization at a time when it had fewer characteristics of an existing employee organization than STEA had when it filed the petition herein.

who do not have a permanently assigned run and/or work less than (4) hours per day.

IT IS FURTHER ORDERED that the employer shall submit to the Director and the two employee organizations, within ten days from the date of receipt of this decision, an alphabetized list of all employees within the stipulated unit who were employed on the payroll date immediately preceding the date of this decision.

DATED: New York, New York
October 23, 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	:	#1F-10/23/81
CITY OF YONKERS PARKING AUTHORITY UNIT of the CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO	:	BOARD DECISION AND ORDER
upon the Charge of Violation of Section 210.1 of the Civil Service Law.	:	CASE NO. D-0223

On July 7, 1981, the Chief Legal Officer of the City of Yonkers Parking Authority (the Authority) filed a charge alleging that the City of Yonkers Parking Authority Unit of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) had violated Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned and engaged in a one-day strike against the Authority on July 1, 1981.

The charge further alleged that all save two members of CSEA participated in the strike.

The CSEA filed an answer but thereafter agreed to withdraw it, thus admitting the factual allegations of the charge, upon the understanding that the charging party would recommend, and this Board would accept, a penalty of loss of CSEA's right to have dues and agency shop fees deducted for a period of three (3) months. The charging party has so recommended.

On the basis of the unanswered charge, we find that CSEA 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 will effectuate the policies of the Act.

WE ORDER that the dues and agency shop fees, if any, deduction rights of the City of Yonkers Parking Authority Unit of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO be suspended, commencing on the first practicable date, and continuing for a period of three months. Thereafter, no dues or agency shop fees shall be deducted on its behalf by the City of Yonkers Parking Authority until the City of Yonkers Parking Authority Unit of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

DATED: New York, New York
October 22, 1981

Harold R. Newman, Chairman

Ida Klaus

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of MANHASSET UNION FREE SCHOOL DISTRICT, Employer, -and- MANHASSET EDUCATION SUPPORT PERSONNEL ASSOCIATION, NYSUT, AFT, AFL-CIO, Petitioner.	#1G-10/23/81 BOARD DECISION AND ORDER CASE NO. C-2246

On April 27, 1981, the Manhasset Education Support Personnel Association, NYSUT, AFT, AFL-CIO (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition for certification as the exclusive negotiating representative of certain employees employed by the Manhasset Union Free School District (employer). 1/

Thereafter, the parties agreed to a negotiating unit as follows:

> Included: All regular full-time and regular part-time employees employed in the following titles: audio-visual technicians, cleaners, custodians, groundskeepers, federal/state funded program assistants, community aide (guidance), secretarial employees.
>
> Excluded: head custodian, assistant head custodian, secretary to the district clerk, head bookkeeper, motor repair supervisor, supervisor of buildings and grounds, bus dispatcher, community aide (Pound Hill Adult Learning Center) and all other employees.

1/ The instant petition is one for initial representation of these employees.

Pursuant to agreement, a secret-ballot election was held on September 22, 1981 at which there were 55 ballots cast in favor of representation by the petitioner and 55 ballots against representation by petitioner.[2/] Inasmuch as the results of the election do not indicate that the majority of eligible voters in the agreed upon unit who cast valid ballots desire to be represented for purposes of collective bargaining by the petitioner,

IT IS ORDERED that the petition should be, and it hereby is dismissed.

Dated: October 23, 1981
New York, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

2/ The Rules provide for a run-off election only "when an election in which the ballot provides for not less than three choices (i.e., at least two employee organizations and 'neither') results in no choice receiving a majority of the valid ballots cast." [§201.9(i)(1)]

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
VILLAGE OF WALDEN,	:	#2A-10/23/81
Employer,	:	
-and-	:	Case No. C-2283
DISTRICT 65, U.A.W.,	:	
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 65, U.A.W.

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: Water meter reader, water operator, sewer operator, mechanical equipment operator, laborers, mechanic, dispatchers, crossing guards, custodian, court clerk.

Excluded: Village manager, village clerk, public works superintendent, police officers, clerk treasurer, village manager's secretary, building inspector, per diem dispatchers, department of public works summer employees, per diem court clerks, and all other employees.

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

District 65, U.A.W.

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 October, 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

7155

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of DEER PARK PUBLIC LIBRARY, Employer, -and- LOCAL 144/DIVISION 100, HOTEL, HOSPITAL, NURSING HOME AND ALLIED HEALTH SERVICES UNION, SEIU, AFL-CIO, Petitioner.	#2B- 10/23/81 Case No. C-2281

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 144/Division 100, Hotel Hospital, Nursing Home and Allied Health Services Union, SEIU, 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: Senior clerk and full-time and part-time clerk typist

Excluded: All other employees

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 144/Division 100, Hotel, Hospital, Nursing Home and Allied Health Services Union, SEIU, 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 October, 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

7156

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATI S BOARD

In the Matter of	:	
SACHEM CENTRAL SCHOOL DISTRICT,	:	#2C-10/23/81
Employer,	:	
-and-	:	Case No. C-2214
LOCAL 144, DIVISION 100, SERVICE EMPLOYEES INTERNATIONAL UNION, 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 144, Division 100, Service Employees International Union, 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: Bus Monitors.

Excluded: All other employees.

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

Local 144, Division 100, Service Employees International Union, 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 October, 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

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