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State of New York Public Employment Relations Board Decisions from November 6, 1981

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from November 6, 1981

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-11/6/81

In the Matter of

CATSKILL REGIONAL OFF-TRACK BETTING
CORPORATION,

Employer,

-and-

LOCAL 32-E, SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO,

Petitioner.

BOARD DECISION
ON MOTION

Case No. C-1870

In the Matter of

CATSKILL REGIONAL OFF-TRACK BETTING
CORPORATION,

Respondent,

-and-

LOCAL 32-E, SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO,

Charging Party.

Case No. U-5333

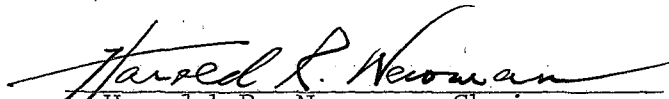
This matter comes to us on a motion of Local 32-E, Service Employees International Union, AFL-CIO (Local 32-E) to reconsider our decision of October 6, 1981 in the above-captioned matters. In that decision we dismissed Local 32-E's exceptions to decisions of the Director of Public Employment Practices and Representation and a hearing officer on the ground that the exceptions were not timely served upon the employer, the Catskill Regional Off-Track Betting Corporation (OTB). The basis of the motion is that the late postmark upon the service can be explained by the possibility


that the mail pickup on that day took place before the scheduled pickup time and before the letter containing the service had been deposited in an official depository of the United States Postal Service.^{1/} Local 32-E indicates that it is able to establish, by affidavit, that the exceptions were timely served in that they were deposited in a proper mail box within the time limits allowed.

OTB, which had originally moved for the dismissal of the exceptions, opposes the motion herein.

Local 32-E is now given until November 18, 1981 to submit affidavits which prove that it complied with §201.12 and §204.10 of our rules concerning the timeliness of its exceptions.

DATED: Albany, New York
November 6, 1981


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

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^{1/} The papers submitted in support of the motion do not address the question of "proof of service" of exceptions in improper practice cases which, as noted in our decision, is required by §204.10(a) of our rules in improper practice cases.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-11/6/81

In the Matter of : BOARD DECISION ON
YONKERS FEDERATION OF TEACHERS : MOTION

~~Upon the Charge of Violation of §210.1~~ : ~~Case No. D-0153~~
~~of the Civil Service Law.~~ :

This matter comes to us on a motion of the Yonkers Federation of Teachers (Federation) to this Board for an order remitting all or part of the forfeiture of its dues deduction and agency shop fee privileges which was ordered on May 2, 1980 (Yonkers Federation of Teachers, 13 PERB ¶3031). In support of its motion the Federation asserts that "intervening facts and circumstances now render remission of dues deduction forfeiture penalty appropriate and compelling in the interest of justice and equity".

The motion is opposed by the Yonkers City School District (District). It notes that the Federation appealed our Order of May 2, 1980, to the Courts and that it was confirmed after "costly litigation". It argues that "any further consideration by PERB would then subsequently force both the Yonkers Board of Education and the YFT to return to the courts for several more years of costly appeals."

History of the Proceeding

On October 17, 1977, the District filed a charge against the Federation alleging that it had engaged in an illegal 15-day

strike between September 7 and September 30, 1977. After a hearing, we determined that the Federation had struck as charged and ordered that the dues deduction and agency shop fee privileges be forfeited for nine months. In doing so, we rejected the argument of the Federation that we take into account conduct of the Federation subsequent to the strike as a factor in determining the penalty that should be imposed for the strike. We noted that such consideration was sought before the assessment of any penalty.^{1/}

The forfeiture ordered by this Board was not effectuated as of the time of the motion herein. It was held in abeyance pending litigation which concluded on April 28, 1981 with the confirmation of our Order.^{2/}

Discussion

We deny the Federation's motion. The "intervening facts and circumstances" on which it now relies are of the same character as those relating to the conduct of the Federation subsequent to the strike which we refused to take into account in 1980. These include "sacrifices made by the Yonkers Federation of Teachers since the strike in 1977, [which promoted] cooperation and harmonious relations between the Yonkers Federation of Teachers and the Yonkers

^{1/} See the discussion of City of New York v. DeLury (Special Term, N.Y. Co., July 3, 1970) 75 LRRM 2275, in our original decision in this matter, footnote 3.

^{2/} Yonkers Federation of Teachers v. Board of Education, 79 AD2d 658 (2d Dept.), 14 PERB ¶7002, mot. for lv. to app. denied, 53 NY2d 605, 14 PERB ¶7015.

Board of Education. . . ." Our reason for refusing to consider those allegations in 1980 was that they were not relevant to the criteria for fixing the duration of the forfeiture penalty that are specified in the statute or to the public policy underlying that determination. That reason is similarly applicable to the Federation's present motion, particularly in view of the Court's confirmation of our Order. We find no basis to reconsider it on alleged factual circumstances that we earlier considered irrelevant, or legal arguments that we earlier rejected.

The court decision would not preclude us, however, from reconsidering the penalty on the basis of relevant facts that might develop in the future which were not present in 1980. The financial inability of an employee organization to continue to function as the statutory representative of the public employees in its unit without the benefit of dues deduction privileges might be relevant in this sense.^{3/} To the extent that the motion herein alleges such an inability to represent unit employees, it is premature however. The allegation could not be considered until the penalty has been put into effect and the Federation asserts that, having made an effort to do so by reasonably available alternative methods, it is not able to collect sufficient

^{3/} See New York Inspection, Security and Law Enforcement Employees, DC 82, 14 PERB ¶3069 (1981); United Federation of Teachers, 14 PERB ¶3073 (1981); and New York City Transit Authority, 14 PERB ¶3074 (1981).

dues to insure proper representation of unit employees.

NOW, THEREFORE, WE ORDER that the motion herein be, and
it hereby is, DENIED.

Dated, Albany, New York
November 6, 1981



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of _____ : #3A-11/6/81
SOUTH HUNTINGTON UNION FREE SCHOOL DISTRICT, :
Employer, :
-and- : Case No. C-2278
UNITED AIDES OF SOUTH HUNTINGTON, NYSUT, :
AFT, 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

United Aides of South Huntington, NYSUT, AFT, 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: Kindergarten aides, A.L.C. (Alternate Learning Center) aides, teacher aides, store aides, clerical aides, G.O. (Government Organization) treasurer aides, library aides, guidance aides, reading aides, L.D. (Learning Disability) aides, math aides, cafeterial aides and E.S.L. (English as a Second Language) aides.


Excluded: Cafeteria office aides, superintendent's office clerical aides, business office clerical aides, all other central office aides and all other employees

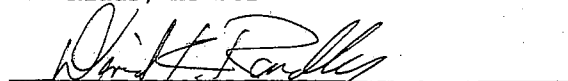
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with

United Aides of South Huntington, NYSUT, AFT, 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 6th day of November, 1981
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #3B-11/6/81
TOWN OF CATSKILL, :
Employer, :
-and- : Case No. C-2217
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., :
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.

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: Landfill operator, assistant landfill operator.

Excluded: All other employees.

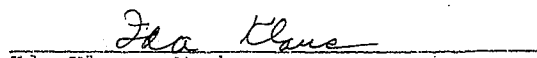
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with

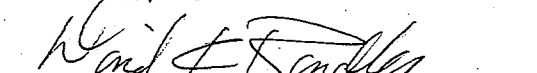
Civil Service Employees Association, Inc.

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 6th day of November, 1981
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member