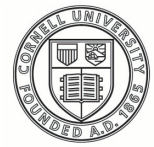

Cornell University ILR School

Cornell University ILR School
DigitalCommons@ILR

Board Decisions - NYS PERB

New York State Public Employment Relations Board (PERB)

11-20-1981

State of New York Public Employment Relations Board Decisions from November 20, 1981

New York State Public Employment Relations Board

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

Thank you for downloading an article from DigitalCommons@ILR.

Support this valuable resource today!

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

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

State of New York Public Employment Relations Board Decisions from November 20, 1981

Keywords

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

Comments

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

This article is available at DigitalCommons@ILR: https://digitalcommons.ilr.cornell.edu/perbdecisions/207

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2A-11/20/81
CATSKILL REGIONAL OFF-TRACK BETTING CORPORATION,	BOARD DECISION ON MOTION
Employer,	
-and-	
LOCAL 32-E, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,	Case No. C-1870
Petitioner.	
In the Matter of	
CATSKILL REGIONAL OFF-TRACK BETTING CORPORATION,	
Respondent,	
-and-	Case No. U-5333
LOCAL 32-E, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,	
Charging Party.	

On October 6, 1981 we dismissed the exceptions of Local 32-E, Service Employees International Union, AFL-CIO (Local 32-E) in the above-captioned matter on the ground that they were not timely served upon Catskill Regional Off-Track Betting Corporation (OTB). The evidence of late service was that the service of the exceptions was postmarked September 15, 1981, while the due date of service was September 11, 1981.

Local 32-E moved this Board to reconsider its decision dismissing the exceptions. It states that it was able to establish by affidavit that the exceptions were timely served in that they were deposited in a proper mailbox within the time

limits allowed and suggested that the last postmark upon the service might be explained by a mail pickup on September 11 which took place before the scheduled pickup time and before the letter containing the service had been deposited in the mailbox.

We reserved decision and gave Local 32-E until November 18, 1981 to submit the affidavit referred to in the motion. Local 32-E has now submitted "an affidavit of service by mail." It states that a copy of the exceptions was deposited "in one of the official depositories of the United States Postal Service located at 41 State Street, Albany, New York, on September 11, 1981."

Accordingly, we now reconsider and reverse our decision of October 6 and accept the exceptions as timely.

DATED: November 20, 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 CIVIL SERVICE EMPLOYEES ASSOCIATION, INC. Respondent, -and- COUNTY OF WAYNE, Charging Party.	#2B-11/20/81 BOARD DECISION AND ORDER CASE NO. U-5093

LEE L. FRANK, for Respondent

DONALD CROWLEY, ESQ., for Charging Party

This matter comes to us on the exceptions of Wayne County (County) to a hearing officer's decision dismissing its charge that the Civil Service Employees Association, Inc. (CSEA) violated its duty to negotiate in good faith. The charge alleges that while negotiating a successor to the parties' 1979-80 agreement, CSEA declared an impasse prematurely, reneged on a commitment it had given the County to negotiate the removal of certain titles from the negotiating unit, refused to consider a County proposal to change health insurance carriers, refused to put some of its provisions in writing and tried to bypass the County's designated negotiator.

CSEA neither filed nor served an answer to the charge before the opening of the hearing. Although it took no note of this failure at the prehearing conference, when the hearing opened, the County made a motion pursuant to Rule 204.3(e) that the

material facts of a charge be deemed admitted.[1/] The hearing officer read the rule as leaving to his discretion whether or not to grant the motion and he denied it on the ground that the County was not prejudiced by CSEA's failure to file or serve a timely answer.

In its exceptions the County asserts that the hearing officer's denial of its motion was an error. We do not agree. The language of Rule 204.3(e) leaves the treatment of an untimely answer to the discretion of the hearing officer. We conclude that the hearing officer did not abuse his discretion when he decided the motion on the ground that the County was not prejudiced. In reaching this conclusion, we find it significant that the County did not object to the untimeliness of the filing of the answer at the first opportunity available to it.[2/]

[1/] Rule 204.3(e) provides: "If the respondent fails to file a timely answer, such failure may be deemed by the hearing officer to constitute an admission of the material facts alleged in the charge...." (emphasis supplied)

[2/] See Massapequa, 7 PERB ¶4510 (1974), affirmed, 7 PERB ¶3024 (1974). In that case a charge was timely filed but not timely served upon the respondent. As here, the adverse party did not raise the issue of timeliness of service until the opening of the hearing, although it had had a prior opportunity to do so at a prehearing conference. Neither did it show any prejudice. This Board determined that the hearing officer did not abuse his discretion when he declined the respondent's motion to dismiss the charge.

We now turn to the merits of the County's exceptions. In August 1979, while the parties' prior agreement was still in effect, CSEA sought to negotiate a mid-term salary increase to take effect in July 1980. The County agreed to consider the proposal in return for CSEA's agreement to consider its proposal that certain job titles be excluded from the negotiating unit. Negotiations concerning these two matters extended over a period of months without success. The County then indicated that it would ask this Board to redefine the unit. CSEA responded by withdrawing its salary proposal and asking the County not to bring the unit issue to PERB because it would be better if it were "worked out at the negotiating table." Granting CSEA's request, the County did not file a petition with this Board.[3/] Instead, when negotiations for a successor agreement commenced on September 3, 1980, it submitted a proposal that certain job titles be deleted from the negotiating unit. CSEA's response was that the matter was not a mandatory subject of negotiation and that it would not discuss the proposal.

During the negotiations that followed, the County proposed a change in the health insurance carrier. CSEA refused to discuss the matter on the ground that it did not understand the implications of the change. The County submitted a written explanation of the demand and arranged a meeting with its

---

[3/] CSEA's request was made on June 2, 1980, two days after the time when the County could have brought the issue to this Board had lapsed. Accordingly, the petition, if filed, would not have been timely.

insurance consultant so that an oral explanation could be given. CSEA did not attend this meeting and it continued to refuse to discuss the matter until after it declared an impasse.

During the course of negotiations, in September and October of 1980, CSEA's negotiators made proposals concerning shift differentials, grievance procedures and the upgrading of positions. The County showed some interest in these proposals and asked CSEA to put them in writing so that their details could be evaluated. CSEA failed to do so.

Between September 3 and November 6, 1980, the parties met in negotiations seven times. During that period, they reached agreement on a number of items that were important to them. Among the items that were not resolved were the length of the agreement and salary increases. Prior to November 6, the only mention of these matters consisted of CSEA's statement that it wanted a 15 percent salary increase and a one-year agreement, and the County's indication that it wanted a two-year agreement. The County made no salary offer. Discussion on these two items commenced on November 6 with the County saying, "If you're talking one year, we couldn't go more than 1 percent." CSEA responded, "OK. We're at impasse," and the meeting ended. Thereafter, the parties met once again before the appointment of a mediator. They continued to meet with the mediator, and later with a fact finder, eventually resolving the differences between them.

After declaring an impasse, CSEA asked its members to telephone individual members of the County's Board of Supervisors requesting them to persuade their County negotiator to soften his stand on salary and health insurance issues. It did not refuse to meet with the County negotiator.

Dealing with the five specifications of the charge seriatim, the hearing officer determined that CSEA did not violate its duty to negotiate in good faith. He ruled that it did not declare an impasse prematurely because the seven negotiating sessions gave it enough understanding of the posture of the County for it to have reasonably concluded that the parties needed the assistance of a mediator. He determined that, although CSEA misled the County by offering to negotiate the removal of titles from the negotiating unit if the County would not commence a representation proceeding, its subsequent refusal to do so was not a violation of its duty to negotiate in good faith because the subject is not mandatorily negotiable. He concluded that, given CSEA's subsequent negotiation of the County's health insurance proposal, its refusal to attend the meeting with the County's insurance consultant was "bad manners", but did not constitute a refusal to negotiate in good faith. He held that "while CSEA might have responded in a more timely fashion" to the County's request that it put its proposals in writing, its failure to do so did not constitute a refusal to negotiate in good faith because there was no indication that the failure "was intended to, or actually did, hinder the course of negotiations."

Finally, he found that CSEA did not bypass the County negotiator when it directed its members to telephone members of the County's Board of Supervisors in that the phone calls did not constitute negotiations.

We reverse the decision of the hearing officer dismissing the charge. Taken alone, some of CSEA's actions complained about by the County might not constitute bad faith negotiations. Other aspects of CSEA's conduct would constitute bad faith negotiations. The test applicable to these facts, as first stated in Southampton PBA, 2 PERB ¶3011 (1969), is whether, by its conduct, CSEA evidenced a sincere desire to reach agreement. In that case, this Board noted that even where it could not determine that a party violated its duty of good faith negotiation on the basis of an isolated act during negotiations, it could do so on the basis of the totality of the party's conduct. Here, we find that at each step, CSEA's conduct prevented the parties from engaging in genuine negotiations to reach agreement. We conclude that the totality of CSEA's conduct during negotiations evidenced lack of intent to reach agreement and, therefore, violated §209-a.2(b) of the Taylor Law.

ACCORDINGLY, WE ORDER CSEA:

1. To cease and desist from refusing to negotiate in good faith with the County of Wayne,[4/] and

---

[4/] We do not order CSEA to negotiate because the parties have reached an agreement since the filing of the charge.

2. To post a notice in the form attached at each location on the County of Wayne's premises to which it has access by contract, practice or otherwise.

DATED: November 19, 1981
Albany, New York

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

The Civil Service Employees Association, Inc., hereby notifies employees of the County of Wayne that it will not refuse to negotiate in good faith with the County.

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.

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.

7179

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-11/20/81

In the Matter of INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO, LOCAL 628, upon the Charge of Violation of Section 210.1 of the Civil Service Law.	BOARD DECISION AND ORDER Case No. D-0218

On May 7, 1981, the Chief Legal Officer of the City of Yonkers filed a charge alleging that the International Association of Firefighters, AFL-CIO, Local 628 (Respondent), had violated the Public Employees' Fair Employment Act (Act), in particular Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned, and engaged in a two-day strike against the City of Yonkers during the period from 5:00 P.M. April 15, 1981, through about 6:00 P.M. April 17, 1981. It appears from the charge that during the strike the entire membership of the Respondent absented themselves from their duties without authorization. This is the second instance of a strike violation by Respondent (See 12 PERB ¶3103).

Respondent filed an answer which, inter alia, denied the material allegations of the charge. However, it thereafter agreed to withdraw its answer, thus admitting all of the allegations of the charge, upon the understanding that the charging party would recommend, and this Board would accept, a penalty of indefinite suspension of Respondent's check-off privileges for dues and agency shop fees, if any, with permission to Respondent to apply to this Board for full restoration of such deduction privileges one year after initiation of such suspension and 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 the International Association of Firefighters, AFL-CIO, Local 628, violated CSL §210.1 in that it engaged in a strike as charged. We determine that the recommended penalty is a reasonable one, and will effectuate the policies of the Act.

WE ORDER that the deduction privileges for dues and agency shop fees, if any, of the International Association of Firefighters, AFL-CIO, Local 628, be suspended indefinitely, commencing on the first practicable date, provided that it may apply to this Board at any time one year after the initiation of such suspension 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 one of Section 210 of the Civil Service Law 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 government as required by the provisions of Civil Service Law §210.3(g). If it becomes necessary to utilize the dues deduction process for the purpose of paying the whole or any part of a fine imposed

by order of a court as a penalty in a contempt action arising out of the strike herein, the suspension of dues deduction privileges ordered hereby may be interrupted or postponed for such period as shall be sufficient to comply with such order of the court, whereupon the suspension ordered hereby shall be resumed or initiated, as the case may be.

DATED: Albany, New York
November 20, 1981

Harold R. Newman
HAROLD R. NEWMAN, Chairman

Ida Klaus
IDA KLAUS, Member

David C. Randles
DAVID C. RANDLES, Member

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-11/20/81

In the Matter of

POLICE CAPTAINS, LIEUTENANTS AND SERGEANTS ASSOCIATION

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

BOARD DECISION AND ORDER

Case No. D-0216

On May 7, 1981, the Chief Legal Officer of the City of Yonkers filed a charge alleging that the Police Captains, Lieutenants and Sergeants Association (Respondent), had violated the Public Employees' Fair Employment Act (ACT), in particular Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned, and engaged in a strike against the City of Yonkers during the period from 8:00 P.M. April 15, 1981, through about 6:00 P.M. April 17, 1981. It appears from the charge that during the strike all but three of the members of the Respondent absented themselves from their duties without authorization.

Respondent filed an answer which, inter alia, denied the material allegations of the charge. However, it thereafter agreed to withdraw its answer, thus admitting all of the allegations of the charge, upon the understanding that the charging party would recommend, and this Board would accept, a penalty of suspension of Respondent's check-off privileges for dues and agency shop fees, if any, for a period of eight (8) months. The charging party has recommended this penalty.

On the basis of the unanswered charge, we find that the Police Captains, Lieutenants and Sergeants Association violated CSL §210.1 in that it engaged in a strike as charged. We determine that the recommended penalty is a reasonable one, and will effectuate the policies of the Act.

WE ORDER that the deduction privileges for dues and agency shop fees, if any, of the Police Captains, Lieutenants and Sergeants Association, be suspended for a period of eight (8) months, commencing on the first practicable date. Thereafter, no dues or agency shop fees shall be deducted on its behalf by the City of Yonkers until the Police Captains, Lieutenants and Sergeants Association affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

DATED: Albany, New York
November 20, 1981

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of UNIFORMED FIRE OFFICERS ASSOCIATION, upon the Charge of Violation of Section 210.1 of the Civil Service Law.	#2E-11/20/81 BOARD DECISION AND ORDER Case No. D-0217

On May 7, 1981, the Chief Legal Officer of the City of Yonkers filed a charge alleging that the Uniformed Fire Officers Association (Respondent), had violated the Public Employees' Fair Employment Act (Act), in particular Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned, and engaged in a two-day strike against the City of Yonkers during the period from 5:00 P.M. April 15, 1981, through about 6:00 P.M. April 17, 1981. It appears from the charge that during the strike all but two of the membership of the Respondent absented themselves from their duties without authorization. Picketing indicating that the membership was on strike also occurred.

Respondent filed an answer which, inter alia, denied the material allegations of the charge. However, it thereafter agreed to withdraw its answer, thus admitting all of the allegations of the charge, upon the understanding that the charging party would recommend, and this Board would accept, a penalty of suspension of Respondent's check-off privileges for dues and

agency shop fees, if any, for a period of nine (9) months. The charging party has recommended this penalty.

On the basis of the unanswered charge, we find that the Uniformed Fire Officers Association violated CSL §210.1 in that it engaged in a strike as charged. We determine that the recommended penalty is a reasonable one, and will effectuate the policies of the Act.

WE ORDER that the deduction privileges for dues and agency shop fees, if any, of the Uniformed Fire Officers Association, be suspended for a period of nine (9) months, commencing on the first practicable date. Thereafter, no dues or agency shop fees shall be deducted on its behalf by the City of Yonkers until the Uniformed Fire Officers Association affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

DATED: Albany, New York
November 20, 1981

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

#2F-11/20/81

In the Matter of

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 456,

BOARD DECISION AND ORDER

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

Case No. D-0219

On May 7, 1981, the Chief Legal Officer of the City of Yonkers filed a charge alleging that the International Brotherhood of Teamsters, Local 456 (Respondent), had violated the Public Employees' Fair Employment Act (Act), in particular Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned and engaged in a two-day strike of sanitation workers against the City of Yonkers during the period from 7:00 A.M. April 16, 1981, through about 5:00 P.M. April 17, 1981. It appears from the charge that during the strike the entire membership of the Respondent absented themselves from their duties without authorization. Picketing indicating that the membership was on strike also occurred.

Respondent filed an answer which, inter alia, denied the material allegations of the charge. However, it thereafter agreed to withdraw its answer, thus admitting all of the allegations of the charge, upon the understanding that the charging party would recommend, and this Board would accept, a penalty of suspension of Respondent's check-off privileges for dues and

agency shop fees, if any, for a period of four (4) months. The charging party has recommended this penalty.

On the basis of the unanswered charge, we find that the International Brotherhood of Teamsters, Local 456, violated CSL §210.1 in that it engaged in a strike as charged. We determine that the recommended penalty is a reasonable one, and will effectuate the policies of the Act.

WE ORDER that the deduction privileges for dues and agency shop fees, if any, of the International Brotherhood of Teamsters, Local 456, be suspended for a period of four (4) months, commencing on the first practicable date. Thereafter, no dues or agency shop fees shall be deducted on its behalf by the City of Yonkers until the International Brotherhood of Teamsters, Local 456 affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

DATED: Albany, New York
November 20, 1981

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

7188

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#3A-11/20/81
STATE OF NEW YORK (DIVISION OF STATE POLICE), Employer,	:	
-and-	:	
FRATERNAL ORDER OF NEW YORK STATE TROOPERS, INC., Petitioner,	:	Case No. C-2299
-and-	:	
POLICE BENEVOLENT ASSOCIATION OF THE NEW YORK STATE POLICE, 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

POLICE BENEVOLENT ASSOCIATION OF THE NEW YORK STATE POLICE, INC.

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: Sergeants, Technical Sergeants, Zone Sergeants, First Sergeants, Chief Technical Sergeants, Staff Sergeants, Lieutenants, Technical Lieutenants, Captains, Majors and Station Commanders

Excluded: All other employees

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

POLICE BENEVOLENT ASSOCIATION OF THE NEW YORK STATE POLICE, 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 20th day of November, 1981
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

PERB 58.3

7189

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

STATE OF NEW YORK (DIVISION OF STATE POLICE),
Employer,

-and-

FRATERNAL ORDER OF NEW YORK STATE TROOPERS, INC.,
Petitioner,

-and-

POLICE BENEVOLENT ASSOCIATION OF THE NEW YORK STATE POLICE, INC.,
Intervenor.

#3B-11/20/81

Case No. C-2298

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

POLICE BENEVOLENT ASSOCIATION OF THE NEW YORK STATE POLICE, INC.

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: Investigators, Senior Investigators, Investigative Specialists

Excluded: All other employees

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

POLICE BENEVOLENT ASSOCIATION OF THE NEW YORK STATE POLICE, 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 20th day of November, 1981
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

PERB 58.3

7190