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State of New York Public Employment Relations Board Decisions from January 27, 1982

New York State Public Employment Relations Board

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Keywords
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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-1/27/82

In the Matter of

ALBANY COUNTY and ALBANY COUNTY SHERIFF's DEPARTMENT,

Joint Employer,

-and-

ALBANY COUNTY DEPUTY SHERIFF'S ASSOCIATION, INC., NEW YORK STATE DEPUTY SHERIFF'S ASSOCIATION, INC.,

Petitioner,

-and-

ALBANY COUNTY SHERIFF'S DEPARTMENT LOCAL 775, COUNCIL 82, AFSCME, AFL-CIO,

Intervenor.

BOARD DECISION AND ORDER

CASE NO. C-2261

HINMAN, STRAUB, PIGORS & MANNING, P.C. (BERNARD J. MALONE, ESQ., Of Counsel), for Petitioner

ROWLEY & FORREST, P.C. (RICHARD R. ROWLEY, ESQ., Of Counsel), for Intervenor

On May 8, 1981, the Albany County Deputy Sheriff's Association, Inc. (Association) filed a petition to decertify the Albany County Sheriff's Department Local 775, Council 82, AFSCME, AFL-CIO (Local 775), as the representative of a unit consisting of deputy sheriffs, correction officers, matrons, investigators, training director, identification technician and identification assistant. The petitioner seeks to establish and be certified with respect to a unit consisting only of deputy sheriffs. Their joint employer, the Sheriff and the County of Albany, took no

position and stated their neutrality.

After a hearing, the Acting Director issued a decision on November 18, 1981, granting the petition, finding an appropriate unit consisting of all deputy sheriffs and directing an election in that unit. The matter comes to us on the exceptions of Local 775 to that determination. Local 775 has filed a brief in support of its exceptions and the Association has filed a brief in response thereto.

Although many of Local 775's exceptions are directed to findings of fact by the Acting Director, for the purposes of this decision we shall accept their accuracy. In view of our decision, it is not necessary to consider all of the exceptions of Local 775.

Briefly, Local 775 has been the representative of a unit of employees of the Albany County Sheriff's Department since that unit was designated by the Director in 1975. As of the time of the petition herein, the unit consisted of approximately 36 deputy sheriffs, 100 correction officers, 2 identification officers and 2 prison matrons. The record demonstrates a harmonious relationship among the various groups throughout the six-year period until a group of correction officers engaged in a strike on February 25, 1981. Some of the deputy sheriffs were assigned to work at the jail during the ten-hour strike and they did so. While crossing the picket line they were subjected to verbal abuse. Shortly thereafter, the Association was formed and it filed the petition herein to represent a unit of deputy sheriffs only. Local 775 intervened and protested the fragmentation of its unit. As noted above, the joint employer took no position regarding the

appropriateness of the unit.

The Acting Director determined that the strike by the correction officers created a sharp conflict of interest between the deputy sheriffs and the correction officers which conflict of interest required placing the deputy sheriffs in a separate unit. He noted that the cause of the strike related to working conditions peculiar to the correction officers, that the deputy sheriffs were required to assume correction officers' duties and that they were subjected to villification by the strikers in crossing the picket line.

DISCUSSION

We reverse the Acting Director's determination and dismiss the petition. The present negotiating unit is essentially that defined as appropriate in County of Albany, 8 PERB ¶4028 (1975). This unit is consistent with decisions by this Board recognizing that the common "law enforcement" responsibilities of deputy sheriffs and correction officers (by whatever title) warrant a single unit for both. County of Rockland, 11 PERB ¶3050 (1978); County of Schenectady, 14 PERB ¶3013 (1981). There is no evidence in this record of a disparity in the quality of representation furnished to either group of employees by Local 775 either before or after the strike. There is no evidence of any history of ineffective or inadequate collective negotiations by Local 775 on behalf of the deputy sheriffs. Indeed, it would appear that both

groups of employees have been represented to an equal degree by Local 775. There is no evidence of any actual conflict or hostility between the two groups prior to or after the strike, only a showing of temporary hostility occasioned by a ten-hour strike. Both groups of employees are employed by the same joint employer, the Sheriff and the County of Albany, a factor which we have held to be a sufficient reason for establishing a separate unit for Sheriff Department personnel. County of Orange, 14 PERB ¶3012 (1981); County of Schenectady, 14 PERB ¶3013 (1981). Finally, the joint employers take no position on the question of the appropriate unit for these employees. Thus, the sole question is whether the circumstance of the strike and the picket-line conduct toward the deputy sheriffs is sufficient evidence of a conflict of interest to warrant the severance of deputy sheriffs from an otherwise appropriate and effective unit. We conclude that it is not.

In County of Montgomery, 12 PERB ¶3126 (1979), we noted that the possibility that deputy sheriffs might be called upon to exercise their police functions in the event of a strike by other County employees is relevant to the consideration of the administrative convenience of the Sheriff, where he urges a unit of deputy sheriffs separate from those not employed by the Sheriff. Here, the Sheriff and the County take a neutral position.

Relying in part upon our decision in County of Montgomery, the Acting Director concluded that where a strike has actually occurred, the confrontation between the employees and the hostility engendered is evidence of a sufficient conflict of interest to justify fragmentation of the unit. We do not be-

lieve that the present record supports such a finding. In light of all of the other factors present in this case which support the appropriateness of the present unit, we determine that the strike and its effects do not justify a separate unit for the deputy sheriffs.

Accordingly, it is ordered that the petition of the Association be, and it hereby is, dismissed.

Dated, January 27, 1982
New York, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-1/27/82

In the Matter of

TOWN OF SMITHTOWN,

Respondent,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, TOWN OF SMITHTOWN UNIT, SUFFOLK CHAPTER, LOCAL 852,

Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-5204

ANTHONY J. FORTE, TOWN ATTORNEY (DONALD B. BLYDENBURGH, ESQ., of Counsel), for Respondent

ROEMER & FEATHERSTONHAUGH, ESQS. (MARJORIE E. KAROWE, ESQ., of Counsel), for Charging party

This matter comes to us on the exceptions of the Civil Service Employees Association, Town of Smithtown Unit, Suffolk Chapter, Local 852 (CSEA) to the remedial action recommended by the hearing officer upon her determination that the Town of Smithtown (Town) had violated §209-a.1(d) of the Act when it unilaterally discontinued the practice of permitting certain Town employees to use Town vehicles on a 24-hour basis, including driving to and from work. CSEA excepted only to the hearing officer's refusal to include in the remedial order a provision directing the reimbursement to affected employees of any monies expended in getting to and from work because of the discontinuance

of the practice. The Town filed a response to CSEA's exceptions but did not file any exceptions to the hearing officer's decision and recommended order. Accordingly, the only question presented to us is whether, on the basis of the record before us, it would effectuate the purposes of the Act to order monetary damages for the violation found, in addition to the remedy recommended by the hearing officer. We hold that such a remedy is not appropriate under the circumstances of this case.

FACTS

It had been the practice of the Town for a number of years to allow certain Town employees to use Town vehicles on a 24-hour basis, including driving to and from work. The Town paid for all gas, oil and maintenance for these vehicles. In negotiations for a contract to succeed one which expired on December 31, 1980, the Town proposed to limit the use of vehicles to those who obtain permission of the Town Board. By November 1980, the parties reached tentative agreement on contract language regarding use of Town vehicles:

> The question of Town vehicle use by employees shall be referred to the Labor-Management Committee on an individual basis. This paragraph shall replace any prior agreement or practice.

This agreement did not take effect, however, because the parties were unable to resolve their dispute over salaries.

On January 6, 1981, the Town Board adopted a resolution which prohibited the use of Town vehicles after work except with

the permission of the Town Board. This action led to the charge herein. Thereafter, on February 24, 1981, the Town and CSEA entered into a memorandum of understanding containing the above quoted November 1980 language. This agreement did not take effect until June 23, 1981 when it was ratified by both parties. By its terms, that agreement was retroactive to January 1, 1981.

The hearing officer held that the Town's unilateral change in the practice regarding the use of Town vehicles was in violation of §209-a.1(d) of the Act. The hearing officer determined that, as an appropriate remedy, the Town be directed 1) to rescind its resolution of January 6, 1981, and 2) to negotiate in good faith with CSEA, and not to alter terms and conditions of employment of unit employees. She rejected a "make whole" remedy as inappropriate, since the parties' final agreement, which is retroactive to January 1, 1981, includes language which not only replaces the prior practice regarding the use of Town vehicles, but provides a procedure through the use of a Labor-Management Committee to deal with any question relating to the use of such vehicles on an individual basis.

In support of its exceptions, CSEA contends that the remedy directed by the hearing officer is inadequate either as a deterrent for wrongdoing or as compensation for the affected employees.

DISCUSSION

We have previously ordered reimbursement to affected employees of reasonable transportation expenses incurred as a

result of the improper discontinuance of the practice of permitting use of employer-owned vehicles. County of Onondaga, 12 PERB ¶3035, aff'd County of Onondaga v. PERB, 77 AD 2d 783 and Town of Oyster Bay, 14 PERB ¶3002. The record in this case, however, discloses significant additional factors not present in our earlier cases. In this case, the parties have negotiated a contractual provision changing the past practice and providing for a contractual procedure to determine the use of employer-owned vehicles. They have agreed that such contractual procedure shall be effective retroactively to a date prior to the complained-of unilateral action of the employer.

CSEA argues that the contractual procedure agreed upon - resort to the Labor-Management Committee - is prospective only and cannot provide retroactive relief to the affected employees. On the basis of the record before us, we cannot determine whether or not this is so. In any event, we conclude, as did the hearing officer, that the parties have agreed to delegate to the Labor-Management Committee all questions regarding use of employer-owned vehicles. Whatever limitations there may be on the powers of that Committee to resolve questions relating to the subject matter must be deemed to have been agreed to by both parties when they finally ratified their contract. Any remedy that we might order by way of reimbursement for use of personal vehicles could be inconsistent with determinations to be made by the Labor-Management Committee. We agree with the hearing officer, therefore, that a "make whole" remedy is inappropriate under these circumstances and would not effectuate the purposes of the Act.

Accordingly, we affirm the decision of the hearing officer and adopt her recommended order.

THEREFORE, WE ORDER THAT

(1) The Town of Smithtown rescind the Town Board resolution of January 6, 1981, affecting the use of Town vehicles by Town employees.

(2) The Town of Smithtown shall negotiate in good faith with CSEA regarding terms and conditions of employment of unit employees and shall not alter such terms and conditions of employment without such negotiations.

(3) The Town of Smithtown shall post conspicuously the attached notice in those places normally used by the Town to communicate with unit employees.

DATED: New York, New York
January 26, 1982

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all unit employees that:

1. We will rescind the Town Board resolution of January 6, 1981, affecting the use of Town vehicles by unit employees.

2. We will not alter, and we will negotiate in good faith with CSEA regarding, terms and conditions of employment of unit employees.

Town of Smithtown
.....
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.

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STATE OF NEW YC
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#3A-1/27/82
ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF SARATOGA SPRINGS, Employer,	:	
-and-	:	
SARATOGA TRANSPORTATION EMPLOYEES ASSOCIATION, Petitioner,	:	Case No. C-2138
-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.	:	

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

SARATOGA TRANSPORTATION EMPLOYEES ASSOCIATION

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: Transportation Personnel

Excluded: Transportation Supervisor, Dispatcher, Chief Executive Officer, Central Office managerial and confidential employees, employees in other bargaining units and employees who do not have a permanently assigned run and/or work less than (4) hours per day.

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

SARATOGA TRANSPORTATION EMPLOYEES 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 26th day of January , 1982
New York, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

PERB 58.4

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

VILLAGE OF LYONS,
Employer,

-and-

TEAMSTERS LOCAL 506,
Petitioner,

-and-

LYONS UNIT, CIVIL SERVICE EMPLOYEES ASSOCIATION,
Intervenor.

#3B-1/27/82

Case No. C-2314

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

Teamsters Local 506

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 employees of the Village of Lyons

Excluded: Village Clerk, Deputy Clerk and Public Works Superintendent, part-time and temporary employees

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

Teamsters Local 506

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 26th day of January, 1982
New York, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

PERB 58.3

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATI[illegible] BOARD

In the Matter of

NORTH TONAWANDA CITY SCHOOL DISTRICT,

Employer,

-and-

NORTH TONAWANDA SCHOOL CLERICAL/NURSE UNIT, LOCAL 872, CSEA/AFSCME, AFL-CIO,

Petitioner.

#3C-1/27/82

Case No. C-2356

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 North Tonawanda School Clerical/ Nurse Unit, Local 872, CSEA/AFSCME, 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: Clerical personnel and school nurses

Excluded: Secretary to superintendent, school district treasurer and aides

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with North Tonawanda School Clerical/ Nurse Unit, Local 872, CSEA/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 26th day of January, 1982
New York, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

PERB 58.3