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4-13-1982

## State of New York Public Employment Relations Board Decisions from April 13, 1982

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from April 13, 1982

### Keywords

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

### Comments

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-4/13/82

In the Matter of  
BALDWINSVILLE CENTRAL SCHOOL DISTRICT,

:  
: BOARD DECISION AND ORDER

Respondent,

-and-

BALDWINSVILLE TEACHERS ASSOCIATION,

:  
: CASE NO. U-5455

Charging Party.

In the Matter of  
BALDWINSVILLE CENTRAL SCHOOL DISTRICT,

Respondent,

-and-

TEACHER ASSISTANTS OF THE BALDWINSVILLE  
CENTRAL SCHOOL DISTRICT,

:  
: CASE NO. U-5541

Charging Party.

RICHARD R. ROSINSKI,  
for Respondent

MELINDA DOUD,  
for Charging Parties

The charges herein were filed by the Baldwinsville Teachers Association (BTA), which represents the teachers employed by the Baldwinsville Central School District (District), and by the Teacher Assistants of the Baldwinsville Central School District (TA), which represents the teacher assistants employed by the District. Both BTA and TA charged the District with refusing to negotiate the impact of its elimination of teaching and teaching assistant

positions that had been occasioned by a drop in student enrollment. Both employee organizations had made demands designed to ease the impact of the layoffs upon employees whose positions had been eliminated. The District indicated its willingness to negotiate with the employee organizations as to the impact of the elimination of positions on the remaining employees of the District but not on those who were laid off.<sup>1/</sup>

In its defense, the District asserted that the parties had already negotiated and reached an agreement on what to do for employees who are laid off, the subject matter of the demands, and that both associations thereby waived any right to further negotiations before the expiration of the collectively negotiated agreements then in effect.<sup>2/</sup> With respect to the teachers, the District relies on Sections 1.4 and 5.5 of its agreement with BTA. Section 1.4 is a zipper clause which indicates that the agreement is complete. Section 5.5 deals with abolished positions and provides:

If a Teacher's position is abolished and such abolition would result in a termination of his or her employment, the District will use its best effort to place the Teachers in another position provided . . . .

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1/ As the factual and legal issues presented by the two charges were identical and the same representatives appeared for the parties in both cases, they were consolidated by the hearing officer.

2/ BTA's agreement expires on June 30, 1982. TA's agreement expires on June 30, 1983.

With respect to the assistants, the District relies on Article 16 and Article 10 of its agreement with TA. Article 16 is a zipper clause that is similar to Section 1.4 of the BTA agreement.

Article 10 deals with reductions in force and provides that the superintendent will notify the president of TA before assistants are laid off, meet with its representatives and consider its suggestions and comments, but that he shall not be bound by any of these suggestions.

The District made two further arguments. First, it contended that the impact of the layoffs on unit employees who were being laid off is not a mandatory subject of negotiation. Second, it contended that the specifics of some of the impact demands make them nonmandatory subjects of negotiation.

The hearing officer rejected all of the District's arguments. He concluded that the zipper clause contained no explicit waiver and the more specific clause dealt with limited aspects of the problems created by layoffs and were not intended by the parties to preclude further negotiations on the impact of layoffs. In rejecting the District's contention that the impact demands did not constitute a mandatory subject of negotiation, he merely stated that this contention had been raised prematurely because the parties had not yet begun to negotiate regarding the impact.

In its exceptions, the District reasserts the scope of negotiation defenses. It also argues that the hearing officer's treatment of the impact of layoffs was too narrow. In support of this argument, it contends that the combination of a clause in each agreement dealing with the subject of layoffs, together with

the zipper clauses, is sufficient to foreclose further negotiations until the agreements expire.

The parties' past negotiation of the subject of layoffs and the resultant agreements would, ordinarily, indicate that the District had satisfied its duty to negotiate this subject during the life of the agreements. Here, however, other circumstances indicate that the zipper clauses in the agreements and the clauses specifically dealing with aspects of the problems created by layoffs were not intended by the parties, and were not understood by the District, to preclude further negotiations on the impact of layoffs. This is clear from the undisputed evidence in this record of the District's position before the fact finder during the negotiation of the 1977-79 teachers' agreement. One of the demands then made by the BTA was for "the right to negotiate the impact of any and all staff reductions." The District opposed this demand in the brief it submitted to the fact finder, not on the ground that it was inconsistent with Section 1.4 and 5.5 of the agreement, to be carried over from the prior agreement, but because the District was "already under the statutory duty to negotiate the impact of any reduction in staff." Thus, notwithstanding the presence at that time of the contract language on which it now relies for its claim of waiver, the District did not then deem its agreement with BTA as foreclosing further negotiation on the impact of layoffs. There is no basis in the record for finding that the District had a different understanding of its statutory obligation with respect to the negotiation of the impact of layoffs under the TA agreement.

We also reject the District's argument that its statutory duty to negotiate the impact of layoffs relates only to the impact upon remaining employees. We have ruled that demands which would provide benefits to unit employees who may be laid off in the future are mandatory subjects of negotiation. Somers, 9 PERB ¶3014 (1976). Moreover, in New Rochelle City School District, 4 PERB ¶3060 (1971), the case in which we first held that a public employer may decide to lay off employees when positions are eliminated, we ruled that "the employer is obligated to negotiate with the Federation on the impact of such decisions on the terms and conditions of employment of the employees affected." This ruling encompasses persons who are employed at the time when the public employer makes its decision to institute layoffs. Indeed, they are the employees who are affected in the most serious way. There is no rational basis for holding that a public employer must negotiate the impact of layoffs upon unit employees who may not be laid off but not upon unit employees who are being, or have already been, laid off.

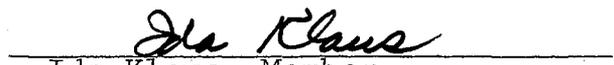
Of the 19 demands made by the associations, two, according to the District, are nonmandatory by reason of their specific content. These are demands #17 and #18 which would provide "The order of layoff will be determined in accordance with state law", and "The preferred eligible list will be developed and itemized in accordance with state law". We find merit in the District's contention that these two demands need not be negotiated. Matters enjoined by law are not mandatory subjects of negotiation. Chateaugay CSD, 12 PERB ¶3015 (1979).

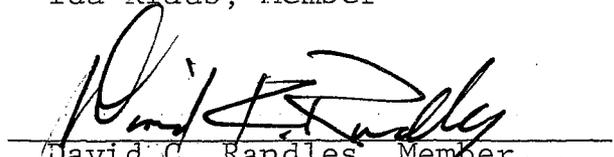
We find that the District refused to negotiate in good faith regarding demands made by BTA and TA to relieve the impact of its decision to abolish positions of teachers and teacher assistants except for the two demands that we determine not to constitute mandatory subjects of negotiation.

NOW, THEREFORE, WE ORDER the District to negotiate the demands made by BTA and TA regarding the impact of the elimination of its position of teachers and teacher assistants whose positions have been eliminated except for demands #17 and #18.

DATED: April 12, 1982  
Albany, New York

  
\_\_\_\_\_  
Harold R. Newman, Chairman

  
\_\_\_\_\_  
Ida Klaus, Member

  
\_\_\_\_\_  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of : #2B-4/13/82  
UNITED FEDERATION OF TEACHERS, :  
Respondent, : BOARD DECISION AND ORDER.  
-and- :  
ANNA-MARIA THOMAS, : CASE NO. U-5402  
Charging Party. :

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JAMES R. SANDNER, ESQ. (PAUL H.  
JANIS, ESQ., of Counsel), for Respondent

STEVENS, HINDS, JACKSON & WHITE  
(DEBORAH A. JACKSON, ESQ., of Counsel),  
for Charging Party

This matter comes to us on the exceptions of Anna-Maria Thomas to a hearing officer's dismissal of her charge that United Federation of Teachers (UFT) breached its duty of fair representation in that it did not represent her adequately in connection with two grievances. The grievances allege (1) that Thomas, a physical education teacher, was excessed in January 1980, although another physical education teacher with less seniority was retained, and (2) that she was not recalled in September 1980, although yet another physical education teacher with less seniority than she was recalled.

The hearing officer found the record to be devoid of evidence that UFT did not provide reasonable support for Thomas' grievances and he dismissed the charge.

Thomas filed exceptions which were not accompanied by proof of service as required by §204.10(a) of this Board's

Rules of Procedure. We, therefore, called this omission to Thomas' attention in a letter saying:

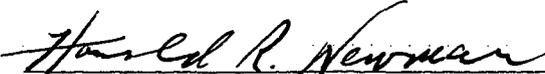
"[Y]ou did not file any proof of service of your exception upon the United Federation of Teachers . . . . [I]t appears that the exceptions were defective. There may, however, be an explanation for this situation. If so, please supply it. Be sure to send a copy of any letters dealing with this matter to the United Federation of Teachers."

Thomas did not respond to this letter, but UFT, which was sent a copy, did. It asserted that it had not been served with the exceptions and, it argued, since the time to file valid exceptions had passed, the decision of the hearing officer is final and binding.

The exceptions herein were not validly filed. UFT was not served with a copy of them. Also, the proof of service which is required by Rule 204.10(a) is missing.

NOW, THEREFORE, WE ORDER that the exceptions herein be, and they hereby are, rejected. In accordance with §204.14 of our Rules of Procedure, the decision of the hearing officer is final and binding.

DATED: April 12, 1982  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-4/13/82

In the Matter of

SCHUYLER-CHEMUNG-TIOGA BOCES,

Respondent,

-and-

SCHUYLER-CHEMUNG-TIOGA BOCES  
EDUCATIONAL SUPPORT STAFF ASSOCIATION,

Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-5480

SHULL & COYLES, ESQS. (DONALD B. COYLES,  
ESQ., of Counsel), for Respondent

JOHN B. SCHAMEL, for Charging Party

This matter comes to us on the exceptions of the Schuyler-Chemung-Tioga BOCES Educational Support Staff Association (Association) to a hearing officer's dismissal of its charge that Schuyler-Chemung-Tioga BOCES (BOCES) violated all four subdivisions of §209-a.1 (1) by refusing to provide information requested for negotiations and (2) by refusing to negotiate the impact of its decision to reassign two unit employees.

The First Specification of the Charge

While the parties were in negotiations, the Association requested the following eight categories of information from BOCES on April 27, 1981:

- 1) the allotment and use of personal days from 1977-81,
- 2) the allotment and use of sick days for the same period,
- 3) the number of sick days contributed to the sick bank,
- 4) the allotment and use of vacation days,

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- 5) copies of all requests to leave the work station,
- 6) all overtime paid to unit employees,
- 7) all compensary time paid to unit employees,
- 8) access to surveys conducted by BOCES with teachers relating to their aides' hours of work, break time and lunch time.

The Association did not indicate why it needed the information in any but the first category, but there were BOCES negotiation proposals related to some of them. BOCES wrote to the Association on June 5, one day after the charge was filed, offering to make the material sought available for inspection, except for the last category which, it asserted, had no bearing on negotiations. The record establishes, however, that BOCES did not know that the charge had been filed at the time when it sent this letter.

The hearing officer determined that BOCES was under no obligation to provide the information in categories two through eight because the Association's need for that information was not self-evident and the Association never showed why it needed that information. Accordingly, she dismissed so much of the first specification of the charge as complained about BOCES' failure to provide those categories of information.

She determined that the Association showed that it needed the first category of information to verify assertions made by BOCES regarding personal leave abuse. BOCES offered the Association the requested personal leave data at a negotiation session held on May 11, 1981, but the Association rejected it, explaining that the information was of no use without the names of the employees

who took personal leave. The original request did not specify that the names be provided and, according to the hearing officer, a need for them was not established. Finding that BOCES offered the first category of requested information on May 11, and that, in any event, the information offered by BOCES on June 5, 1981 satisfied its obligation in this regard, the hearing officer dismissed the remaining part of the first specification of the charge.

In its exceptions to the dismissal of the first specification of the charge, the Association argues: (1) It showed why it needed the names; (2) BOCES' failure to respond to the request for information prior to June 5, 1981 was the equivalent of a denial of its request; (3) BOCES' letter of June 5, 1981 was irrelevant to the issues presented by the charge because it was sent after the charge had been filed and, in any event, there is no proof in the record that the letter was received by the Association; (4) BOCES' failure to make an earlier response to the Association constituted a waiver of its right to deny that the eighth category of information was not necessary for bargaining.

Having reviewed the record and considered the arguments of the parties, we affirm the hearing officer's decision dismissing the first specification of the charge. In doing so, we find it unnecessary to consider the Association's first argument in support of its exceptions, which raises the question whether it should have done any more to show that it needed some of the requested information once it was shown that there were BOCES negotiation proposals

related to those parts of the request. This is because we conclude that by its letter of June 5, 1981, BOCES satisfied its duty to provide necessary information to the Association. The implication contained in the Association's exceptions that the letter was not received must be rejected because the Association never denied receiving the letter. Neither do its exceptions challenge BOCES' assertion that the eighth category of information sought was not related to negotiation needs.

With respect to the first request, we affirm the hearing officer's determination that the Association never showed any need for the names of the individuals involved. Thus, the required information in this category was offered on May 11 and refused. With respect to the second through seventh requests, BOCES satisfied its obligation when, on June 5, 1981, it provided the information sought. With respect to the eighth request, there was no obligation to provide information.

#### The Second Specification of the Charge

The record shows that the parties met at two negotiation sessions during which the Association's proposals were discussed. At the end of the second session BOCES stated that it did not feel its unilateral action had impacted on the negotiating unit and that it would not submit any counterproposals to the Association's demands. The Association then declared an impasse and filed the charge herein. There is no indication in the record that BOCES was unwilling to participate in the impasse procedures provided under the Taylor Law.

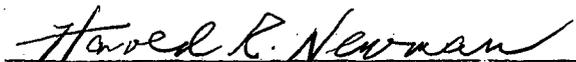
The hearing officer determined that BOCES' duty to negotiate in good faith did not include an obligation to concede that its reassignment of two unit employees had a negotiable impact on the unit or, under the circumstances herein, to make a counter-proposal to the Association's demands. Accordingly, she dismissed the second specification of the charge on the ground that the record contained no evidence of bad faith.

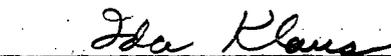
In its exceptions the Association argues that the impact of BOCES' unilateral action was manifest and its denial that there was an impact was, by itself, a refusal to negotiate in good faith. According to BOCES, the correctness of its opinion that there was no impact is irrelevant to the merits of the charge because, as the hearing officer found, it was participating in negotiations.

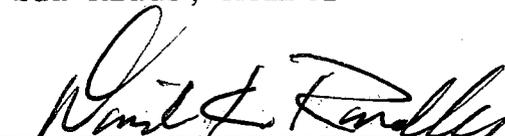
Having reviewed the record and considered the arguments of the parties, we adopt the findings of fact and conclusions of law of the hearing officer and we affirm her decision dismissing the second specification of the charge.

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

DATED: April 13, 1982  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-4/13/82

In the Matter of

BOARD OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK,

BOARD DECISION AND ORDER

Respondent,

-and-

ATTENDANCE TEACHERS ORGANIZING COMMITTEE,  
NEA, NYC and DONALD J. BARNETT,

CASE NO. U-5037

Charging Parties.

DAVID BASS, ESQ., for Respondent

KENNETH AGELOFF, ESQ., for Charging Parties

This matter comes to us on the exceptions of the Attendance Teachers Organizing Committee, NEA, NYC (ATOC) and Donald J. Barnett (jointly, charging parties) to a hearing officer's decision dismissing their charge that the Board of Education of the City School District of the City of New York (District) violated §209-a.1(a), (b) and (c) of the Taylor Law. The charge alleges that the District interfered with the efforts of Barnett and other proponents of ATOC to support its efforts to replace the United Federation of Teachers (UFT) as the negotiating representative of a unit of attendance teachers; that it discriminated against Barnett and others who supported these efforts of ATOC; and that it interfered with the organizing activities of ATOC.

Charging parties specify five improper actions which allegedly establish these violations: 1. That the District permitted 34 employees to take leaves of absence in order to work

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on behalf of UFT while denying all requests for leave of absence made by Barnett and other supporters of ATOC; 2. The District denied ATOC the same access to unit employees that it granted to UFT and that it denied ATOC a list containing the names and addresses of all unit employees; 3. The District checks off union dues and agency shop fee payments on behalf of UFT while refusing to do so on behalf of ATOC; 4. UFT is using funds, some of which have been obtained from agency shop fee payments, to promote its status as the representative of unit employees; 5. This Board has committed an error in that it has failed to enforce its order in Case D-0116, a case in which we directed the forfeiture of dues checkoff privileges of UFT. Charging parties allege further that the staff of this Board has failed to initiate investigations into the merits of ATOC's objections to an election held on March 11, 1980, in which the majority of the unit employees voted for UFT in preference to ATOC.

The relevant background of the charge is that on November 30, 1979, ATOC filed a petition for certification as representative of the attendance teachers employed by the District, a unit of employees then represented by UFT. In an election held on March 11, 1980, UFT received a majority of the votes. ATOC filed objections to the conduct of the election and an improper practice charge. In the charge it made the same complaints about the District and UFT that it made in its objections to the conduct of the election. Four months later the Director of Public Employment Practices and Representation dismissed

not significant in the instant case because none of its actions complained about in the charge could be found to be improper.

The first and second actions of the District complained about by ATOC deal with privileges granted to UFT that were denied to it. If these specifications relate to the election campaign period, they are not timely because the charge was filed more than four months after the election. If they deal with a later period of time, the District was no longer under an obligation to afford the challenging employee organization the same opportunities to reach unit employees that it affords the recognized representative. Cheektowaga-Maryvale UFSD, 11 PERB ¶3080 (1978), aff'd Maryvale Educators Association v. Newman, 70 AD2d 753, 12 PERB ¶7009 (3d Dept., 1979), mot. for lv. to app. den. 48 NY2d 605, 12 PERB ¶7018 (1979). Indeed a recognized organization may have a right, by negotiation, to have employee leaders given time off to work on behalf of the unit members. City of Albany, 7 PERB ¶3078 (1974), aff'd City of Albany v. Helsby, 48 AD2d 998 (3d Dept., 1975), 8 PERB ¶7012, aff'd City of Albany v. Helsby, 38 NY2d 778, 9 PERB ¶7005 (1975).

The complaints relating to UFT's dues checkoff and agency shop fee privileges also fail to state a cause of action under §209-a of the Taylor Law. The District did not comply with our order in D-0116 because a challenge to that order was pending in Federal Court. The decision of the Second Circuit upholding our order was issued on April 1, 1982.

The aspect of the charge complaining that UFT acted improperly in using agency shop fee payments to promote its status as representative of attendance teachers is based upon

the objections and a hearing officer dismissed the improper practice charge. The basis of these decisions was that ATOC no longer had standing to prosecute the objections or the charge. Appeals from those decisions, and of a subsequent dismissal of the objections and the charge following our order remanding those matters for further hearing, are still pending before this Board.

The hearing officer dismissed the charge herein on the ground that it fails to state a cause of action under the Taylor Law. In support of their exceptions, charging parties argue that the hearing officer erred in that he dealt only with the specific overt acts of the District complained about in the charge, whereas he should have dealt with them collectively because, while none of the specific overt acts may have constituted a violation, taken together they demonstrate a pattern of discrimination. They assert that if a hearing had been held, they would have been able to demonstrate that the policies of the District are designed to maintain UFT's status as the representative of the unit employees.

We affirm the decision of the hearing officer. A series of separate actions, none of which, by itself, would constitute an improper practice, will not, simply by being viewed in the aggregate, constitute an improper practice. This is not to say that where some of the separate actions are of a questionable character the course of conduct of which the actions were a part may not establish the evidence needed to characterize the actions as improper.<sup>1/</sup> The pattern of the District's conduct is

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<sup>1/</sup> See eg., CSEA (Wayne County), 14 PERB ¶3092 (1981).

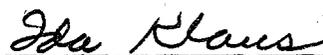
an assumption that the District must police the use of agency shop fees by UFT. We find no such obligation.

Finally, to the extent that the charge repeats allegations contained in the objections to the conduct of the election and in the related improper practice charge, it must be dismissed. The allegations are time barred and they are, moreover, already before us in other proceedings.

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

DATED: April 13, 1982  
Albany, New York

  
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Harold R. Newman, Chairman

  
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Ida Klaus, Member

  
\_\_\_\_\_  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2E-4/13/82

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In the Matter of :  
BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT : BOARD DECISION  
OF THE CITY OF NEW YORK : AND ORDER  
Upon the Application for Designation of : CASE NO. E-0718  
Persons as Managerial or Confidential :

---

BRIAN J. McDONNELL, ESQ. and MARC Z. KRAMER,,  
ESQ., for Petitioner

CASSIN & CASSIN, ESQS. (WILLIAM F. CASSIN,  
ESQ., of Counsel), and McHUGH, LEONARD & O'CONNOR  
(WILLIAM BRODERICK, ESQ., of Counsel) for Intervenor

The Board of Education of the City School District of the City of New York (Employer) filed an application seeking to designate its 29 District Supervisors of Custodians and four Borough Supervisors as managerial or confidential employees as defined in §201.7(a) of the Public Employees Fair Employment Act (Act)<sup>1/</sup>. A hearing was conducted by the Acting Director of Public

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1/ Section 201.7(a) defines the term "public employee" as "any person holding a position by appointment or employment in the service of a public employer except that such term shall not include for the purposes of any provision of this article other than sections two hundred ten and two hundred eleven of this article...persons...who may reasonably be designated from time to time as managerial or confidential upon application of the public employer to the appropriate board.... Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii)."

Employment Practices and Representation (Director). At the conclusion of the presentation of the Employer's case, a motion was made by the Intervenor, Local 891, International Union of Operating Engineers, AFL-CIO, the negotiating agent for both positions, to dismiss the application as to all but one Borough Supervisor, O'Donnell, and, as to him, to continue the proceeding to permit the Intervenor to present evidence. The Director issued a decision granting the motion. This matter comes to us on the exceptions of the Employer to that part of the Director's decision which granted the motion to dismiss.

#### FACTS

Approximately 960 custodians or custodial engineers (hereinafter all referred to as custodians) are employed by the Employer to maintain its 1,018 schools. The buildings are divided into 32 districts. Twenty-nine of these are under the jurisdiction of District Supervisors of Custodians. The districts are grouped by Boroughs, which are under the jurisdiction of Borough Supervisors. The duties of the District and Borough Supervisors, as established by the record, are set forth below.

A District Supervisor, in supervising custodians, may recommend to a Borough Supervisor the bringing of disciplinary charges against a custodian. If the Borough Supervisor agrees,

he recommends to Hugh J. Forde, the Director of the Bureau of Plant Operation Services, that such charges be brought.<sup>2/</sup> Of the approximately 100 charges that have been recommended to Forde, he has rejected one third. If charges are issued, Forde has authority to impose a reprimand as the penalty. Any penalty beyond that must be imposed by the Board of Education.

Neither the District nor Borough Supervisors participate in the hiring of custodians.

The District and Borough Supervisors participate in the evaluation of custodians. The evaluations are conducted pursuant to a plan agreed to in a contract between the Employer and the union representing the custodians. The plan is used in the transfer of custodians by the Employer to higher paying positions and is based primarily on the evaluations and seniority. Under the plan, the District Supervisors evaluate the custodians three times a year. These evaluations may be appealed to the Borough Supervisors and, if not satisfactorily resolved at that level, to Forde. When being considered for transfer, the custodians are evaluated by the Borough Supervisors. The evaluations are made on a prescribed form containing the criteria, with numerical ratings given for each criterion. The criteria, each consisting of several elements which are rated, fall into four categories: cleaning, maintenance, training and management

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<sup>2/</sup> Forde is not a member of the unit represented by the Intervenor. The Acting Director assumed for the purposes of disposition of the motion that Forde and Anthony Smith, the Executive Director of the Division of School Buildings, meet the statutory criteria for managerial designation. That assumption is unchallenged.

of employees, and cooperation with others. Neither the District nor Borough Supervisors participated in the establishment of the criteria.

District Supervisors periodically review expenditures made by custodians for other than personal services. Pursuant to the custodians' collective bargaining agreement, if an expenditure is disallowed by the District Supervisor, the Borough Supervisor and a representative of the custodians' union meet to attempt to resolve the matter. If not resolved at this level, a contractual grievance may be filed, which is heard at the first level by Forde.

Additionally, Borough Supervisors provide training for new custodians, schedule the dates of night visits by District Supervisors to various facilities, the number of which is fixed by the Employer, and authorize custodians to make additional expenditures for personal services in the event of an emergency.

The Employer presented no evidence that the District or Borough Supervisors participate in the formulation of policy or that any of them, other than O'Donnell, participate in the preparation for or conduct of negotiations or have access to confidential information.

On these facts, and in reliance upon our decisions in Metropolitan Suburban Bus Authority, 7 PERB ¶3025 (affirming 7 PERB ¶4016 [1974]), confirmed as MSBA v. PERB, 48 AD2d 206 (3rd Dept., 1975), 8 PERB ¶7009, lv. to app. den. 37 NY2d 712, and City of Binghamton,

12 PERB ¶3099 (affirming 12 PERB ¶4022 [1979]), the Acting Director dismissed the application as to all but O'Connell.

#### DISCUSSION

In its exceptions and supporting brief, the Employer argues that the facts show that the District and Borough Supervisors have a major role in the administration of agreements and personnel administration.

Having reviewed the record, we reject the exceptions and affirm the decision of the Acting Director. The record clearly shows that they do not have a major role in the administration of agreements or personnel administration. Their role, carefully circumscribed by the custodians' collective bargaining agreement, is limited to supervision.

We have drawn a distinction between managerial and supervisory employees in several decisions. <sup>3/</sup> The distinction is that a manager has the authority, in implementing an agreement or in personnel administration, to change the employer's procedures or operations. The record is devoid of any evidence that the District Supervisors and those Borough Supervisors as to whom the application herein was

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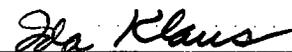
<sup>3/</sup> State of New York, 5 PERB ¶3001 (1972); Copiague and Hempstead School Districts, 6 PERB ¶3001 (1973); Metropolitan Suburban Bus Authority, supra; City of Binghamton, supra.

dismissed, possess any such authority.

NOW, THEREFORE, WE AFFIRM the decision of the Acting  
Director.

DATED: April 12, 1982  
Albany, New York

  
\_\_\_\_\_  
Harold R. Newman, Chairman

  
\_\_\_\_\_  
Ida Klaus, Member

  
\_\_\_\_\_  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2F-4/13/82

In the Matter of

NORTH SYRACUSE CENTRAL SCHOOL DISTRICT,

Employer,

and

NORTH SYRACUSE EDUCATION ASSOCIATION,

Petitioner.

BOARD DECISION

ON MOTION

CASE NO. C-2367

On November 30, 1981, the North Syracuse Education Association (Association) filed a petition to add per diem substitutes employed by the North Syracuse Central School District (District) to a unit that it now represents which consists of regular teachers and satellite personnel. The District opposed the petition on the ground that the substitutes should not be in the same unit as the teachers. It further asserted that the Association should not be permitted to represent per diem substitutes because it engaged in a strike in 1976.

As required by Section 201.9(a)(1) of our Rules of Procedure, the Director of Public Employment Practices and Representation (Director) conducted an investigation of the questions concerning representation raised by the Association's petition and the District's response. He ascertained all the facts that he deemed necessary for resolving these questions without holding a hearing.<sup>1/</sup>

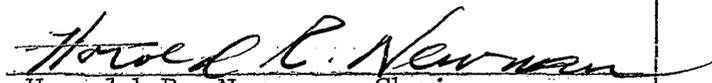
<sup>1/</sup> Rule 201.9(a)(2) provides that "The Director may direct a hearing. . . ." (Emphasis supplied.)

The District then made the motion herein, pursuant to Section 201.9(c)(3) of our Rules of Procedure, for permission to appeal the Director's interlocutory ruling denying a hearing. In support of its motion, it asserts that the Director erred in determining that a hearing was unnecessary. The District requests that the matter be remanded for hearing. The Association joins in the District's motion.

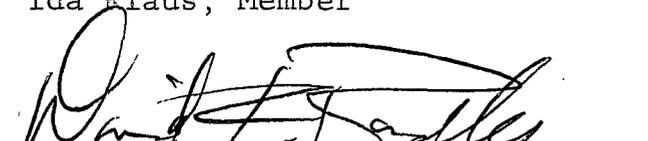
We have reviewed the papers submitted by the parties and the record as made. We cannot conclude that there is a sufficient likelihood that a hearing will be required. Accordingly, there is no basis for departing from our normal procedure by rejecting the interlocutory ruling of the Director.

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

DATED: April 13, 1982  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randies, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of :  
NEW YORK CITY TRANSIT AUTHORITY, :  
Employer, : DECISION ON MOTION  
-and- :  
Case No. C-2336  
TERMINAL EMPLOYEES LOCAL 832, INTERNATIONAL :  
BROTHERHOOD OF TEAMSTERS, :  
Petitioner. :

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On November 12, 1981, Terminal Employees Local 832, International Brotherhood of Teamsters (Local 832) filed a petition which, as amended, sought to represent a unit of 31 full-time senior buyers, buyers and assistant buyers employed by the New York City Transit Authority (TA). The designation cards submitted along with the petition were sufficient for a showing of interest but were four short of the majority which is required for certification without an election pursuant to Section 201.9(g)(1) of our Rules of Procedure. Local 832 then submitted four additional designation cards and on February 10, 1982, we certified it as the representative of the unit.

After the certification was issued, a letter signed by 20 individuals on March 9, 1982 was received by us. The individuals claimed that they were unit employees who never signed any designation cards or other document indicating that they

wished to be represented by Local 832. Of the names on this list, 16 were on the eligibility list and two also appear on the additional designation cards submitted by Local 832 to establish eligibility status. The two signatures on the letter and on the designation cards appear to be by different hands.

We then wrote to Local 832 and TA advising them of the allegation that the designation cards on which we relied for certification were of questionable authenticity and we invited each to respond. TA did not respond. Local 832 responded that there was no basis in fact for the allegation and argued that we should not reopen the matter. It stated:

"We have reason to believe that the petition was circulated and initiated by management and signed under duress or threat of dismissal. This has already happened. . . . Indeed, the petition route itself must be questioned as to its validity as an instrument of free expression of sentiment. There is no confidentiality and management has a copy of every individual who signed."

As the validity of the two designation cards upon which the certification was issued is open to question, it is necessary to conduct an election to ascertain the choice of unit employees in the instant situation.<sup>1/</sup>

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<sup>1/</sup> See Section 207.2 of the Taylor Law.

We revoke the certification of Local 832. This is the same procedure we followed in State of New York, Unified Court System, 12 PERB ¶3019 (1979), where, like here, information was promptly<sup>2/</sup> revealed after the issuance of a certification, which information cast doubt upon the authenticity of the unit employees' support for the certified organization.

NOW, THEREFORE, WE ORDER that

1. the certification issued to Local 832 on February 10, 1982 be, and it hereby is, revoked; and
2. this matter be remanded to the Director of Public Employment Practices and Representation

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<sup>2/</sup> The unit employees who signed the letter of March 9, 1982, were not parties to the representation proceeding and they claim that they did not know what was happening in the proceeding until the certification was issued and made public. One of the unit employees called us to inquire as to how Local 832 could have been certified as there had been no election. When he was told of Rule 201.9(g)(1), he said that Local 832 could not have submitted designation cards on behalf of a majority of the unit employees because most of them were opposed to representation by Local 832. The letter of March 9, 1982 followed this telephone conversation.

to conduct an election to ascertain  
the choice of the unit employees.

DATED: April 13, 1982  
Albany, New York

*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

#2H-4/13/82

In the Matter of :  
ROCKY POINT UNION FREE SCHOOL DISTRICT, :  
Employer, : BOARD DECISION AND  
-and- : ORDER  
SUFFOLK EDUCATIONAL CHAPTER, LOCAL 870, : CASE NO. C-2404  
CSEA, :  
Petitioner. :

On December 29, 1981, the Suffolk Educational Chapter, Local 870, CSEA (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 Rocky Point Union Free School District.

The parties executed a Consent Agreement wherein they stipulated that the negotiating unit would be as follows:

Included: All employees in the following titles: Chief custodian, head custodian, custodial worker, maintenance person, security guard.

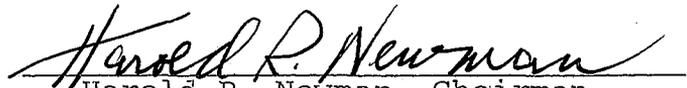
Excluded: All other employees.

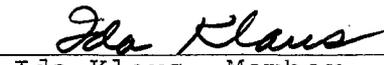
Pursuant to the Consent Agreement and in order for the petitioner to demonstrate its majority status, a secret ballot election was held on April 1, 1982. The results of the election

indicate that a majority of eligible voters in the stipulated unit do not desire to be represented by the petitioner.<sup>1/</sup>

THEREFORE, IT IS ORDERED that the petition be, and it hereby is, DISMISSED.

DATED: Albany, New York  
April 12, 1982

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

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<sup>1/</sup> Of the 15 ballots cast, 3 were for and 12 against representation by the petitioner.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
BALDWIN UNION FREE SCHOOL DISTRICT, : #3A-4/13/82  
Employer, :  
-and- : Case No. C-2401  
BALDWIN TEACHERS ASSOCIATION, :  
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

Baldwin Teachers Association

has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Teaching assistants

Excluded: All other employees

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

Baldwin Teachers 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 12th day of April , 1982  
Albany, New York

Harold R. Newman  
Harold R. Newman, Chairman

Jo Klaus  
Jo Klaus, Member

David C. Randles  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #3B-4/13/82  
SAUGERTIES CENTRAL SCHOOL DISTRICT, :  
Employer, : Case No. C-2363  
- and - :  
THE 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 the 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 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 regular custodians, custodial worker #1 and #2, groundsmen, maintenance men, bus driver/mechanic, and bus driver/warehouse manager.

Excluded: Superintendent of Buildings and Grounds, foreman of maintenance, the head custodian at the Junior-Senior high school, and all others.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the 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 12th day of April, 1982  
Albany, New York

*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 : #3C-4/13/82  
EAST MEADOW UNION FREE SCHOOL DISTRICT, :  
Employer, :  
-and- : Case No. C-2341  
EAST MEADOW TEACHERS ASSOCIATION, LOCAL :  
1665, 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

East Meadow Teachers Association, Local 1665, 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: All teaching personnel, including tenured teachers, probationary teachers, long-term replacement teachers, guidance counselors, nurse-teachers, dental-hygiene teachers, teacher-librarians, school psychologists, remedial instructors, speech therapists and social workers.

Excluded: Per diem substitute teachers and all other employees

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

East Meadow Teachers Association, Local 1665, 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 12th day of April , 1982  
Albany, New York

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 : #3E-4/13/82  
FRONTIER CENTRAL SCHOOL DISTRICT, :  
Employer, :  
-and- :  
FRONTIER CENTRAL UNIT, ERIE EDUCATIONAL : Case Nos. C-2284 &  
LOCAL, CSEA, LOCAL 1000, AFSCME, AFL-CIO, : C-2293  
Petitioner, :  
-and- :  
FRONTIER CENTRAL EMPLOYEES ASSOCIATION, :  
NYSUT/AFT/AFL-CIO, :  
Intervenor. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that

Frontier Central Employees Association, NYSUT/AFT/AFL-CIO has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included:

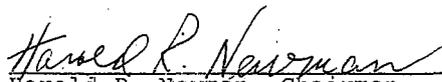
SEE ATTACHED

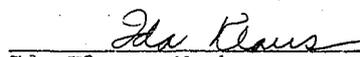
Excluded:

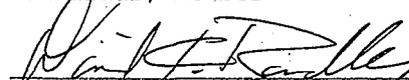
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with

Frontier Central Employees Association, 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 12th day of April , 1982  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

ATTACHMENT A

Included: Account Clerk Typist, Auto Mechanic, A-V Technician, Bus Attendant, Bus Driver, Cleaner, Clerk, Clerk Typist, Cook, Custodian A, Custodian B, Food Service Helper, General Mechanic, Groundsman, Laundry Operator, Lunch Monitor, Motor Equipment Operator, Phone Operator, Registered Nurse, Senior Clerk Typist, Stores Clerk, Teacher's Aide, Transportation Department Laborer and Watchman.

Excluded: District Treasurer, District Clerk, Assistant District Clerk, Supervising Clerk, Head Custodian, Head Maintenance Man, Head Bus Driver, Auto Mechanic Foreman, Secretary to the Superintendent of Schools, Secretary to the Assistant Superintendent of Schools, Superintendent, of Buildings and Grounds, Supervisor of Transportation, School Lunch Manager and Head Groundsman.