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Board (PERB)

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6-9-1982

## State of New York Public Employment Relations Board Decisions from June 9, 1982

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from June 9, 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-6/9/82
In the Matter of	:	
BOARD OF EDUCATION OF THE CITY SCHOOL	:	
DISTRICT OF THE CITY OF NEW YORK,	:	<u>BOARD DECISION</u>
Employer,	:	
-and-	:	<u>ON MOTION</u>
PUBLIC SERVICE PROFESSIONAL ASSOCIATION,	:	
Petitioner,	:	<u>CASE NO. C-2368</u>
-and-	:	
LOCAL 300, SERVICE EMPLOYEES INTERNATIONAL	:	
UNION,	:	
Intervenor.	:	
_____	:	

On May 10, 1982,<sup>1/</sup> we dismissed exceptions of Local 300, Service Employees International Union (Local 300) to a decision of the Acting Director of Public Employment Practices and Representation (Director). The decision directed that an election be held in an existing unit of employees of the Board of Education of the City School District of the City of New York, now represented by Local 300, for which the Public Service Professional Association (Association) filed a petition for certification. The basis of the exceptions was that the Director erred in determining that the Association was an employee organization within the meaning of the Taylor Law and, therefore, eligible to participate in the election.

<sup>1/</sup> 15 PERB, ¶3041

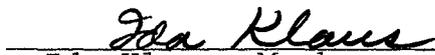
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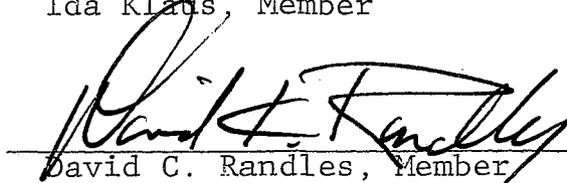
Local 300 now moves us to reconsider our decision affirming the determination of the Director. We find no basis for a reconsideration of our decision of May 10, 1982.

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

DATED: June 7, 1982  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-6/9/82

In the Matter of

LANCASTER CENTRAL SCHOOL DISTRICT,

Employer,

-and-

LANCASTER ASSOCIATION OF SUBSTITUTE  
TEACHERS,

Petitioner:

BOARD DECISION AND ORDER

CASE NO. C-2402

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR,  
ESQS. (DAVID PARMELO, ESQ., of Counsel),  
for Employer

DORNE CHADSEY, for Petitioner

This matter comes to us on the exceptions of the Lancaster Central School District (District) to a decision of the Director of Public Employment Practices and Representation (Director) that the Lancaster Association of Substitute Teachers (Association) should be certified without an election in an agreed-upon unit of per diem substitute teachers. The District does not challenge the determination of the Director that the evidence submitted in support of certification without an election would be sufficient under ordinary circumstances. It argues, however, that certification without an election is inappropriate for a unit of per diem substitute teachers because the relationship of the teachers to the District is so insubstantial that the formality of an election is necessary to focus their attention on the issues involved in

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deciding whether or not they wish to be represented by the Association.<sup>1/</sup> We do not find the Director's determination to apply §201.9(g)(1)<sup>2/</sup> of the Rules in these circumstances to be inappropriate.

NOW, THEREFORE, WE AFFIRM the decision of the Director, and WE ORDER that the exceptions herein be, and they hereby are, DISMISSED.

*Harold R. Newman*  
Harold R. Newman, Chairman

DATED: June 7, 1982  
Albany, New York

*Ida Klaus*  
Ida Klaus, Member

*David C. Randles*  
David C. Randles, Member

1/ We originally held that ordinarily per diem substitutes were not eligible for organization under the Taylor Law in that they usually are casual employees. Bernard King, 6 PERB ¶3083. (1973). The statute was then amended to provide:

A substitute teacher who has received a reasonable assurance of continuing employment in accordance with subdivision ten of section five hundred ninety of the labor law which is sufficient to disqualify the substitute teacher from receiving unemployment insurance benefits shall be deemed to be an employee of the school district that has furnished such reasonable assurance of continuing employment. Section 201.7(d) as amended by L. 1981, c. 814.

2/ Rule 201.9(g)(1) provides:  
Certification without an election. If the choice available to the employees in a negotiating unit is limited to the selection or rejection of a single employee organization, that choice may be ascertained by the Director on the basis of dues deduction authorizations and other evidences instead of by an election. In such a case, the employee organization involved will be certified without an election if a majority of the employees within the unit have indicated their choice by the execution of dues deduction authorization cards which are current, or by individual designation cards which have been executed within six months prior to the certification. The determination by the Director that the indications of employee support are not sufficient for certification without an election is a ministerial act and will not be reviewed by the Board.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#20-6/9/82

In the Matter of

LAURA GODDARD,

Charging Party,

-and-

GATES-CHILI TEACHERS ASSOCIATION,

Respondent.

BOARD DECISION AND ORDER

CASE NO. U-5647

STUART A. ROSENFELDT, ESQ., for Charging Party

BERNARD F. ASHE, ESQ. (IVOR R. MOSKOWITZ, ESQ.,  
of Counsel), for Respondent

On December 16, 1981, a hearing officer determined that Gates-Chili Teachers Association (Association) violated §209-a.2(a) of the Taylor Law by not providing Laura Goddard, charging party herein, with a detailed financial statement explaining the amount of the agency shop fee refund that it made to her. The hearing officer found merit in the charge and he ordered the Association to furnish Goddard with an appropriate financial statement within 30 days. Should it fail to do so, the Association would be required to cease and desist from collecting agency shop fees from Goddard until it furnishes her with such a statement, and to return to her all agency shop fees received from her for the 1979-80 school year, plus interest from September 3, 1980.

The hearing officer further ordered the Association to furnish all agency shop fee payers who seek future refunds with appropriate financial statements along with refunds. Finally, the hearing

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officer ordered the Association to post a notice indicating its intent to comply with the Taylor Law on bulletin boards to which it has access by contract, practice or otherwise.

The matter now comes to us on the exceptions of both the Association and Goddard. The Association's exceptions contain five specifications. ~~Two are that this Board lacks jurisdiction to consider the charge herein and that Goddard failed to state a cause of action because she never appealed the Association's initial determination of her refund, such an appeal being a condition precedent to receiving financial information explaining the amount of the agency shop fee refund. These arguments were rejected by us in past decisions<sup>1/</sup> and are rejected once again.~~

The Association also argues that it was under no duty to provide financial information along with the agency shop fee refund because Goddard never requested an agency shop fee refund. Goddard's request actually specified a refund of "union dues." The hearing officer determined, however, that the parties had understood this request to cover agency shop fees and he rejected the Association's defense based upon Goddard's inaccurate reference to the "union dues." We affirm this determination.

The Association's next basis for its exceptions is that it did provide some financial information to Goddard. The record

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<sup>1/</sup> See UUP (Barry), 13 PERB ¶3090 (1980), affirmed UUP v. Newman, AD2d \_\_\_\_\_ (3d Dept., 1982), 15 PERB ¶7001; Hampton Bays Teachers Association, 14 PERB ¶3018 (1981); East Moriches Teachers Association, 14 PERB ¶3056 (1981); Westbury Teachers Association, 14 PERB ¶3063 (1981).

shows, however, that this information was not provided along with the refund as required by us. Hampton Bays Teachers Association, 14 PERB ¶3018 (1981). Neither was it provided thereafter when Goddard wrote to the Association and made a specific request for it. Only after Goddard's request was ignored by the Association and she filed the charge herein was some financial information furnished to her. Even that information did not adequately explain the basis of the refund of moneys sent to the Association's affiliates. The hearing officer, therefore, properly found that the Association's late furnishing of some information did not constitute compliance with the Taylor Law.

Finally, the Association complains about that part of the hearing officer's proposed order which directs it to furnish all agency shop fee payers with appropriate financial information along with agency shop fee refunds in the future. It argues that the charge was filed "solely on behalf of an individual" and the remedy should, therefore, be limited to that individual. This argument is rejected. The part of the order complained about directs the Association to take action we deem necessary to effectuate the policies of the Taylor Law by preventing similar improper conduct in the future.<sup>2/</sup>

Goddard's exceptions complain that the remedy is inadequate in that she should receive a refund of the agency shop fees she

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<sup>2/</sup>In ordering a party that violates the Taylor Law to make an individual charging party whole, it is usually deemed necessary to order the offending party to desist from similar future violations involving other persons. See UUP (Eson), 12 PERB ¶3117 (1979), confirmed UUP v. Newman, 80 AD2d 23 (3d Dept., 1981), 14 PERB ¶7011, mot. for lv. to appeal den. 54 NY2d 611 (1981), 14 PERB ¶7026.

previously paid. She also argues that the Association's right to agency shop fees should be suspended. The first argument has merit. The violation occurred after the issuance of our decision in UUP (Barry), that an explanatory financial statement must accompany a refund. The respondent has acted with notice of our remedial policy.<sup>3/</sup>

We find no reason on the facts before us to order the suspension of the Association's agency shop fee privileges at this time. Retention of these privileges is conditioned, however, on the Association's compliance with the order herein.

NOW, THEREFORE, WE ORDER the Gates-Chili Teachers Association:

1. to refund to Laura Goddard the total amount of agency shop fees deducted from her salary for 1979-80, with interest at the rate of six percent per annum on this sum from May 28, 1981, the date when she received the agency shop refund, until June 25, 1981, and at the rate of nine percent per annum thereafter;<sup>4/</sup>
2. at the time of any future refund or notice that a refund will not be made, to furnish to all objectors an itemized, audited statement of its receipts and expenditures and

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<sup>3/</sup> See PSC (Rothstein), 15 PERB ¶3012 (1982).

<sup>4/</sup> See CPLR §5004 as amended by L. 1981, c. 258. The amendment raised the interest on litigated obligations from 6 percent to 9 percent effective June 25, 1981.

those of any of its affiliates which receive, either directly or indirectly, any portion of its revenues from agency fees, together with the basis of its determination of the amount of the refund, including identification of those disbursements determined by it and its affiliates to be refundable and those determined not to be refundable. Should it fail to do so, it shall refund all agency shop fees collected after the date of this order;

3. to post a copy of the notice attached hereto on all bulletin boards regularly used by it to communicate with unit employees.

DATED: June 8, 1982  
Albany, New York

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

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

  
\_\_\_\_\_  
David C. Randies, 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 employees in the Unit represented by the Gates-Chili Teachers Association at the Gates-Chili Central School District that:

1. The Gates-Chili Teachers Association shall refund to Laura Goddard the total amount of agency shop fees deducted from her salary for 1979-80 with interest at the rate of 6 percent per annum on this sum from May 28, 1981, the date when she received the agency shop refund, until June 25, 1981, and at the rate of nine percent per annum thereafter.
2. At the time of any future refund or notice that a refund will not be made, the Gates-Chili Teachers Association shall furnish to all objectors an itemized, audited statement of its receipts and expenditures and those of any of its affiliates which receive, either directly or indirectly, any portion of its revenues from agency fees, together with the basis of its determination of the amount of the refund, including identification of those disbursements determined by it and its affiliates to be refundable and those determined not to be refundable. Should it fail to do so, it shall refund all agency shop fees collected after the date of this order.

.....Gates-Chili Teachers Association.....

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 YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2D-6/9/82

PLAINVIEW-OLD BETHPAGE CENTRAL  
SCHOOL DISTRICT,

BOARD DECISION AND ORDER

Respondent,

- and -

CASE NO. U-5697

PLAINVIEW-OLD BETHPAGE CONGRESS  
OF TEACHERS,

Charging Party.

ROBERT D. CLEARFIELD, ESQ.,  
for Charging Party

GREGORY J. GUERCIO, ESQ.,  
for Respondent

The charge herein was filed by the Plainview-Old Bethpage Congress of Teachers (Association). It alleges that the Plainview-Old Bethpage Central School District (District) violated paragraphs (a) and (d) of subdivision 1 of §209-a of the Taylor Law by improperly insisting on the negotiation of a nonmandatory subject of negotiation, suspension of unit employees without pay, to the point of fact finding. The District concedes that it insisted on the demand, but argues that it constitutes a mandatory subject of negotiation under the Act.

Finding no evidence that the District's insistence on the negotiation of the demand constituted a deliberate attempt to interfere with, restrain, or coerce employees in the exercise of their rights protected by the Act, the hearing officer dismissed that part of the charge that alleged a violation of §209-a.1(a). He also found that the demand is a mandatory subject of negotia-

tion and, therefore, dismissed that part of the charge alleging a violation of §209-a.1(d).

The exceptions are directed to the hearing officer's conclusion that the demand is a mandatory subject of negotiation and his determination that the District did not violate §209-a.1(d). The demand at issue purported to allow the District to withhold pay from any teacher who has been suspended pending a hearing on charges and the final determination thereof by a hearing panel pursuant to §3020-a of the Education Law. That statute provides for the initiation of disciplinary charges, hearings, suspension, post-hearing procedures, and appeal procedures in the discipline and removal of certain educational employees. Although subdivision 2 of the statute permits the suspension of a teacher during the hearing and appeal process, it is silent with respect to whether the suspension is with or without pay. Subdivision 4, however, states that "if the employee is acquitted he shall be restored to his position with full pay for any period of suspension. . . ."

The Association argues that the demand herein requires it to waive a statutory right. It then relies upon City of Binghamton, 9 PERB ¶3026 (1976), in which we held (at p. 3045) that the employer's demand was nonmandatory because "an employee organization cannot be compelled to negotiate over a demand that statutory rights of employees whom it represents be waived." There we found that General Municipal Law §207-a implicitly covered the right of a fire fighter to accept or refuse "light duty work" which was the subject of the employer's demand. Thus, the demand

was that the employee organization waive a statutory right of individual employees and, consequently, it was not a mandatory subject of negotiation.

Unlike General Municipal Law §207-a, Education Law §3020-a has not been interpreted by the courts as conferring an implicit or explicit statutory right upon an employee to receive pay during the period of suspension. In Board of Education of the City of Rochester v. Nyquist, 48 N.Y. 2d 97 (1979), the Court of Appeals held that since §3020-a does not absolutely forbid the withholding of pay from a suspended teacher pending resolution of disciplinary charges against a teacher, a provision for a payless suspension may be a term of a negotiated agreement.

Board of Education of the City of Rochester clarified an earlier decision in Matter of Jerry v. City School District of City of Syracuse, 35 N.Y. 2d 534 (1974), which held that §3020-a did not authorize a tenured teacher's suspension without pay. It concluded that, without explicit statutory authorization not found in §3020-a, a school district could not take away the substantive right of compensation. In Board of Education of the City of Rochester, the Court explained that its decision was not inconsistent with Matter of Jerry saying (at p. 104):

In Matter of Jerry, we rejected a school board's contention that it was empowered by section 3020-a to suspend a teacher without pay pending resolution of the disciplinary proceedings against him. Though we there stated that the statute itself did not authorize the board's action, we recognized that the Constitution, at least, posed no impediment to a payless suspension. Matter of Jerry, therefore, is not to be read to stand for the proposition that section 3020-a absolutely forbids the withholding of pay during such a suspension.

Neither Matter of Jerry nor Rochester holds that Education Law §3020-a explicitly or implicitly grants a teacher an absolute statutory right to pay in the event of a suspension. Moreover, as noted, §3020-a, subd. 4 indicates the contrary, saying: "If the employee is acquitted [of the charges] he shall be restored to his position with full pay for any period of suspension. . . ."

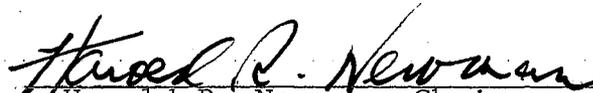
As no benefit is granted explicitly or implicitly by statute, the demand herein cannot be found to compel the Association to waive any benefit. Binghamton is, therefore, inapplicable.

Another case should be considered in connection with the question whether the demand herein is a mandatory subject of negotiation, Auburn Police Local 195 v. Helsby, 91 Misc. 2d 909 (1977), 10 PERB ¶7016; aff'd 62 App. Div. 2d 12 (3d Dept., 1978), 11 PERB ¶7003; aff'd 46 NY 2d 1034 (1979), 12 PERB ¶7006 (1979). There the Courts held that demands relating to the discipline of Civil Service employees are mandatory subjects of negotiation, notwithstanding the provisions of Civil Service Law §§75 and 76 relating to such disciplinary proceedings. The holding of the Courts in that case applies here. The fact that we are here dealing with §3020-a of the Education Law and not CSL §75 is of no consequence. Both sections provide for the initiation of disciplinary charges, hearings, suspension, post-hearing procedures, and appeal procedures in the discipline and removal of public employees. Both sections also contain identical language with respect to the restoration of an acquitted employee to his position with full pay for the period of suspension.

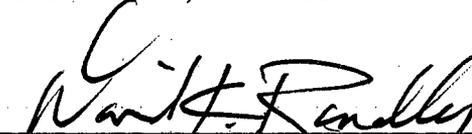
NOW, THEREFORE, WE AFFIRM the decision of the hearing  
officer, and

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

DATED: June 7, 1982  
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 :  
WESTERN REGIONAL OFF-TRACK BETTING : #2E-6/9/82  
CORPORATION, :  
Respondent, :  
-and- :  
SERVICE EMPLOYEES INTERNATIONAL UNION, : BOARD DECISION  
AFL-CIO, LOCAL 222, : AND ORDER  
Respondent, : CASE NO. U-5055  
-and- :  
GAIL HONAN, :  
Charging Party. :

JOHN J. GANNON, ESQ., for Respondent  
OTB

DAVIDSON, FINK, COOK & GATES, ESQS.  
(THOMAS A. FINK, ESQ. of Counsel),  
for Respondent Local 222

SHAPIRO & ROSENBAUM, ESQS. (WARREN  
ROSENBAUM, ESQ. of Counsel) for  
Charging Party

This matter comes to us on the exceptions of Gail Honan to a hearing officer's decision dismissing her charge that the Western Regional Off Track Betting Corporation ("OTB") wrongfully discharged her in violation of §209.1(a) of the Taylor Law and that Service Employees International Union, AFL-CIO, Local 222 ("union" or "Local 222") breached its duty of fair representation in violation of §209.2(a) when it failed to take her grievance

concerning such discharge to arbitration.

Honan, an OTB branch manager, was discharged after an OTB investigation revealed that, while in the process of manually cancelling a returned ticket, she learned that the ticket was a winning one and ceased the cancellation process. She then caused the ticket to be cashed by one of her subordinates and directed that the proceeds be divided among various OTB employees, herself included. The incident was brought to OTB's attention through a chain of conversations between four OTB employees, Smith, Campbell, Amico and Hughes, and Grills, OTB's president. Of the four employees, only Campbell held any high-level union office, that of executive board member.

Honan filed a grievance regarding her discharge with Walsh, the union's executive vice-president. Walsh vigorously, though unsuccessfully, pursued the grievance through all steps preliminary to arbitration. Along with Morgan, Local 222's president, he even presented OTB's personnel director with a demand for arbitration, which had not been authorized by the union's executive board. The "demand" was pulled back when it failed to produce the desired movement from the employer.

Walsh urged the union's executive board to take Honan's grievance to arbitration. The executive board felt that further investigation was needed in order to determine the seriousness of Honan's involvement and whether the grievance had a likelihood of success. It directed Strommer, a grievance chairperson, to conduct the investigation. A question was also raised as to

whether Honan was entitled to union representation, given her nonpayment of dues and lapse of membership. Morgan replied that he would seek an opinion in this regard from the union's attorney.

After further discussions with management failed to bring about a change in OTB's position, the executive board again met and received the report of Strommer's investigation. Her report confirmed the accuracy of the employer's investigation and revealed the extent of Honan's active involvement in the ticket scheme. Morgan reported that the union's attorney had advised that Honan was owed the same representation obligation as would be owed a dues paying member. Walsh voiced the opinion that the grievance ought be taken to arbitration, feeling the discipline to be too severe for a first offense. Morgan, the six other executive board members present at the meeting, and Strommer, however, expressed the opinion that, given the need for absolute integrity in a parlor manager, the seriousness of the offense, its possible criminal nature, the jeopardy in which other jobs may have been placed, and financial considerations which prevented taking apparently unwinnable grievances to arbitration, the grievance should be withdrawn. The executive board then unanimously voted to withdraw the grievance, Walsh changing his position as a result of the discussion.

In her exceptions and supporting brief, Honan essentially makes three arguments. First, she argues that the union breached its duty of fair representation by bringing the incident to the attention of OTB. She argues that the union did so out of

personal hostility towards her, for her nonparticipation in a prior strike by Local 222 and for her nonpayment of union dues. She nonetheless contends that motive is irrelevant when a union acts as a "prosecutor" rather than as a defender of employee rights. Second, Honan argues that the hearing officer erred in making certain findings of fact, resulting in the allegedly erroneous conclusion that the union's officers and executive board considered the grievance on its merits and in good faith. Third, Honan contends that OTB conspired with Local 222 in depriving her of Taylor Law rights.

Having reviewed the entire record, we reject charging party's exceptions and affirm the hearing officer's conclusions of law and material findings of fact. We initially note that Local 222 did not bring the ticket incident to OTB's attention. There is no evidence that the union's president, vice president, or executive board was even aware of the incident prior to Honan's filing of the grievance. Such involvement cannot be imputed to the union merely because a single member of its executive board took part in the chain of conversations which led to OTB's investigation.

We also reject charging party's contention that the hearing officer erred in concluding that Local 222's officers and

executive board properly discharged their representation obligation. As the hearing officer found, the union's officers vigorously pursued Honan's grievance throughout the pre-arbitration stages of the grievance procedure, to the extent of proffering an unauthorized demand for arbitration as a settlement ploy. Walsh continued to plead her cause at labor-management and executive board meetings. The executive board acted responsibly by commissioning its own investigation into the incident, and not making its final decision until ascertaining the actual extent of Honan's involvement and the merits of her case. The record clearly shows not only that Honan's reputation and nonparticipation in the strike played no part in the executive board's deliberations, but that most board members were completely unaware of the same. As regards Honan's nonpayment of dues and resulting lapse of membership, the record shows that, once having received advice from its attorney regarding the equal representation duty owed a nonmember, the executive board did not allow this to be a factor in its decision.

We have reviewed the various allegations of factual error lodged against the hearing officer. Without recounting the same here, we find that in each case, the record amply supports

the hearing officer's findings. Even were we to give credence to charging party's exceptions in this regard, however, we would not find the contrary factual findings to cast any serious doubt upon the propriety of the executive board's conduct.

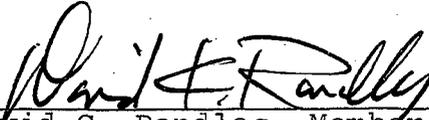
Finally, having rejected those exceptions dealing with the union's conduct, charging party's contention that OTB "conspired" with Local 222 in depriving Honan of protected rights must perforce fall. We also note that the record lacks any evidence of an independent violation by OTB.

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

DATED: June 9, 1982  
Albany, N.Y.

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

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

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

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2F-6/9/82

ALBANY COUNTY SHERIFFS LOCAL 775,  
AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES, AFL-CIO, and  
SECURITY AND LAW ENFORCEMENT EMPLOYEES,  
DISTRICT COUNCIL 82, AFSCME, AFL-CIO

BOARD DECISION

AND ORDER

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

CASE NO. D-0214

ROWLEY, FORREST & O'DONNELL, P.C. (RICHARD R.  
ROWLEY and RONALD G. DUNN, ESQS.), for  
Respondents

MARTIN L. BARR, ESQ. (JEROME THIER, ESQ., of  
Counsel), for Charging Party

On April 13, 1981, Counsel to this Board charged the Albany County Sheriffs Local 775, American Federation of State, County and Municipal Employees, AFL-CIO (Local), and Security and Law Enforcement Employees, District Council 82, AFSCME, AFL-CIO (Council 82) with violating §210.1 of the Civil Service Law (CSL) "in that it caused, instigated, encouraged, condoned and engaged in a strike" against the County of Albany and the Albany County Sheriff on February 25 and 26, 1981. The matter was referred to a hearing officer who determined that there was a strike as alleged in the charge, that the Local and Council 82 did not cause or instigate it, but that they did encourage, condone and engage in it. The Local and Council 82 have now filed exceptions to so much of the hearing officer's decision as finds that they encouraged, condoned and engaged in the strike.

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The respondents represent a unit of approximately 135 deputy sheriffs and correction officers. The correction officers, who number about 95, are charged primarily with the confinement and custody of prisoners in the Albany County Jail. The deputy sheriffs have, on occasion, performed the same duties at the Jail as the correction officers.

At 10:30 p.m., February 25, 1981, 17 of 19 correction officers assigned to the 3 p.m. to 11 p.m. shift at the Jail stopped working because of dissatisfaction with working conditions at the Jail. All 12 of the correction officers assigned to the 11 p.m. to 7 a.m. shift, five of whom were holdovers, refused to work. The striking employees were replaced by other unit employees who were deputy sheriffs and by the two non-striking correction officers who held over from the prior shift.<sup>1/</sup>

The idea of the strike had been suggested by two correction officers who worked the 3 p.m. to 11 p.m. shift. The Local's president, who also worked that shift, first learned of the proposed strike at 5 p.m. and he worked diligently, but unsuccessfully, to cool tempers. The record supports the conclusion that he attempted to prevent the strike. Nevertheless, once the strike began, he walked out with the other correction officers, told the

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<sup>1/</sup>The Jail was inadequately staffed for something less than half an hour, the time that it took to call in the deputy sheriffs. No services were scheduled during this period of time; therefore, no services were left unperformed.

striking employees where they ought to picket and gave a statement to the press that condoned the strike. Additionally, the only other officer of the Local scheduled to work also left the job.

The record supports a conclusion that, once outside, the Local's president tried to persuade the correction officers to return to work and he did persuade them not to interfere with other members of the Local, the deputy sheriffs, who were going into the Jail to work in their place. Among the deputy sheriffs who went to work was a member of the executive board of the Local. Other leaders of the Local and Council 82 also tried to prevent the strike and to terminate it.

On these facts, we conclude that the respondents did not violate §210.1 of the Taylor Law. The strike was neither called by respondents nor endorsed by them in any official manner. It was engaged in by a small minority of the unit employees, and they were replaced at work by other unit employees, among whom was an officer of the Local. While the president of the Local and one of its other officers did participate in the strike, their participation was not sufficient to overcome the fact that most unit employees did not indicate any support for it, and enough indicated their opposition to it by crossing the picket line so that the striking workers were replaced. Indeed, respondents encouraged and facilitated the replacement of the strikers by other unit employees. Additionally, the president did try to prevent the strike and, subsequent to his own walk-out, he did try to terminate it.

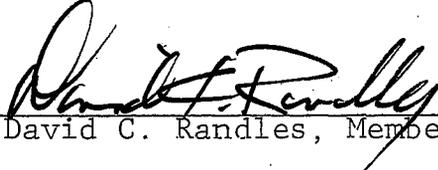
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NOW, THEREFORE, WE ORDER that the charge herein be, and it  
hereby is, DISMISSED.

DATED: June 9, 1982  
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 :  
LANCASTER CENTRAL SCHOOL DISTRICT, : #3A-6/9/82  
Employer, :  
-and- : Case No. C-2402  
LANCASTER ASSOCIATION OF SUBSTITUTE :  
TEACHERS, :  
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

Lancaster Association of Substitute Teachers

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 day-by-day substitute teachers who in the immediately preceding school year received the reasonable assurance of continuing employment referred to in Civil Service Law, §201.7(d).

Excluded: All other employees.

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

Lancaster Association of Substitute Teachers 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 7th day of June , 1982  
Albany, New York

*Harold R. Newman*  
Harold R. Newman, Chairman

*Ida Klaus*  
Ida Klaus, Member

*David C. Ravales*  
David C. Ravales, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
SWEET HOME CENTRAL SCHOOL DISTRICT, : #3B-6/9/82  
Employer, :  
-and- : Case No. C-2432  
SWEET HOME ASSOCIATION OF SUBSTITUTE :  
TEACHERS, 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 Sweet Home Association of Substitute Teachers, 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.

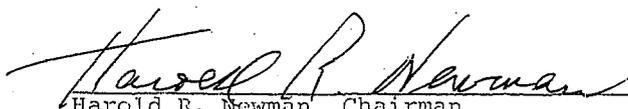
Unit: Included: All per diem substitute teachers who in the immediately preceding school year received the reasonable assurance of continuing employment referred to in Civil Service Law, §201.7(d).

Excluded: All other employees.

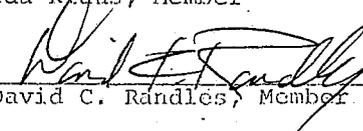
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Sweet Home Association of Substitute Teachers, NYSUT, AFT, AFL-CIO

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 7th day of June , 1982  
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 :  
TOWN OF IRONDEQUOIT, : #3C-6/9/82  
Employer, :  
-and- : Case No. C-2435  
MONROE COUNTY LOCAL 828, TOWN OF :  
IRONDEQUOIT WHITE COLLAR EMPLOYEES UNIT, :  
CSEA, :  
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 Monroe County Local 828, Town of Irondequoit White Collar Employees Unit, CSEA

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: See Attached

Excluded:

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Monroe County Local 828, Town of Irondequoit White Collar Employees Unit, CSEA 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 7th day of June, 1982  
Albany, New York

Harold R. Newman  
Harold R. Newman, Chairman

Ida Klaus  
Ida Klaus, Member

David C. Randles  
David C. Randles, Member

**Included:** Clerk Typist; Clerk III; Recreation Supervisor; Senior Citizen Program Specialist; Senior Nutrition Aide; Police Desk Clerk; Booking Clerk; Public Safety Dispatcher; Youth Referral Counselor; Assistant Animal Control Officer; Account Clerk; Building Permit Clerk; Assistant Building Inspector; Clerk II; Clerk IV; Plumbing Inspector; Assistant to Director of Public Works; Dispatcher; Custodian; Laborer-Custodian; Evidence Technician; Real Property Appraiser Trainee; Neighborhood Program Aide.

**Excluded:** Clerk to Town Justice; Secretary to Chief of Police; Secretary to Commissioner of Public Works; Secretary to Town Clerk; Secretary to Animal Control Officer, employees working twenty hours or less a week and all other employees, and all seasonal employees.

MEMORANDUM OF THE NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD

June 8, 1982

TO: Erwin Kelly

RE: M81-605, I.A. 82-4 City of Kingston and Kingston Professional Fire  
Fighters Association, Local 461

Having received a petition for interest arbitration from the City Council of the City of Kingston on April 28, 1982 in connection with a labor dispute between the City and Local 461, and having received a second such petition from Local 461 on May 4, 1982 to which the Mayor of the City responded, you sought a direction from us as to how to proceed. Upon the instruction of the Chairman of the Board, Deputy Chairman Lefkowitz then wrote to the attorneys of the Mayor, the City Council and Local 461 to solicit memoranda of law directed to the question "whether the Mayor, the Common Council, both jointly, or neither by reason of a disagreement between them is the party authorized to act on behalf of the City of Kingston under §209.4 of the Taylor Law."

Having considered the arguments in these memoranda, the sections of the Charter of the City of Kingston cited to us, the factual allegations contained in the Common Council's offer of proof, and, above all, the language of the Taylor Law, we conclude that it is the Mayor alone who is both authorized and obligated to act on behalf of the City under §209.4 of the Taylor Law.

The Mayor is the Chief Executive Officer of the City, and, as such, he is authorized and obligated to negotiate on its behalf. CSL §201.12. He did so and reached an agreement with Local 461. The Common Council is its legislative body, and, as such, it may refuse to implement parts of an agreement that require the amendment of a local law or the appropriation of monies for its implementation. CSL §204-a. They did so and, thereby, created an impasse. Pursuant to CSL §209.4, such an impasse in negotiations involving a fire department is, at the request of either party, to be resolved by arbitration. Just as this Board was obligated to assist the parties, that is, the employee organization and the Chief Executive Officer of the City, to reach an agreement, by appointing a mediator, we are now obligated to provide arbitration on their behalf. The arbitration panel consists of one member appointed by each of the parties, that is, the employee organization and the Chief Executive Officer of the City, and a third disinterested member selected by both parties. CSL §209.4(c)(ii).

The Taylor Law provides that if an arbitration panel is appointed, the local legislative body may not refuse to implement any parts of the arbitration award. Thus, parts of the award requiring implementation by the enactment of a local law or the appropriation of monies are like parts of an agreement that do not require such implementation; they are binding upon the City whether or not the Common Council agrees.

The Council argues that the Mayor has political obligations to Local 461 which make it unlikely that he will represent the interests of the City reasonably. We cannot conjecture on the quality of the Mayor's performance of his office in this respect. Moreover, we note that an arbitration award that is not supported by the record or is made by arbitrators who do not perform their office honorably may be set aside by a court. Bethlehem Steel Corp. v. Fennie, 86 Misc. 2d 968 (1976), 9 PERB ¶7003, aff'd 55 AD 2d 1007 (4th Dept., 1977), 10 PERB ¶7503.

I, Harold R. Newman, Chairman, Public Employment Relations Board, hereby certify that at a regularly scheduled meeting of the Public Employment Relations Board, held on June 9, 1982 at Albany, New York, such Board, pursuant to the authority vested in it by Article 14 of the Civil Service Law, unanimously adopted the attached amendments to Parts 200, 201, 204, 207 and 214 of its Rules, 4 NYCRR, Chapter VII, to become effective immediately upon filing with the Secretary of State.

A notice of proposed agency action was published in the Register on April 28, 1982. No other prior notice of this action was required by statute.

Date: July 12, 1982



HAROLD R. NEWMAN  
Chairman

Section 200.10 of the Rules of the Public Employment Relations Board, 4 NYCRR, Chapter VII, is hereby amended to read as follows:

(a) The term "filing", as used in this Chapter, shall mean delivery to the Board or an agent thereof, or the act of mailing to the Board [not less than two days before the due date of any filing].

~~(b) The term "service", as used in this Chapter, shall mean delivery to a party or the act of mailing to a party [not less than two days before the due date].~~

Subdivision (e) of section 201.4 of such Rules is hereby amended to read as follows:

(e) The director may direct an investigation and, if necessary, a hearing whenever he deems it appropriate to ascertain whether the evidence submitted is accurate. If he determines that evidence is fraudulent or that the declaration is false, he shall take such reasonable action [that] as he deems appropriate to protect the integrity of the procedures of the Board in connection with the pending matter. Such a determination and such action taken by the Director shall be reviewable by the Board pursuant to section 201.12 of this Part.

Paragraph (7) of subdivision (a) of section 201.5 of such Rules is hereby amended to read as follows:

(7) If an employee organization, whether the [requisite] showing of interest requirement, as set forth in sections 201.3 and 201.4

of these Rules, is met.

Paragraph (8) of subdivision (b) of section 201.5 of such Rules is hereby amended to read as follows:

(8) If an employee organization, whether the [requisite] showing of interest requirement, as set forth in sections 201.3 and 201.4 of these Rules, is met.

Subdivision (e) of section 201.10 of such Rules is hereby amended to read as follows:

(e) Intervention. One or more persons or an employee organization acting in their behalf may be permitted, in the discretion of the Board, or [in the discretion] of the Director, or the designated trial examiner, to intervene in the proceeding. The intervenor must make a motion on notice to all parties in the proceeding. Supporting affidavits establishing the basis for the motion may be required by the Board, [or] the Director, or the designated trial examiner. If intervention is permitted, the person or employee organization becomes a party for all purposes.

Subdivision (a) of section 201.12 of such Rules is hereby amended to read as follows:

(a) Within ~~[10]~~ 15 working days after receipt of the decision of the Director, a party may file with the Board an original and four copies of a statement in writing setting forth exceptions thereto, and an original and four copies of a brief in support thereof [shall be filed with the Board simultaneously, at which time] together with proof of service of copies of such exceptions and brief [shall be served] upon each party to the proceeding.

Subdivision (c) of section 201.12 of such Rules is hereby amended to read as follows:

(c) Within seven working days after service of exceptions, any party may file with the Board an original and four copies of a response thereto or cross-exceptions and a brief in support thereof[. Copies of these documents shall simultaneously be served] together with proof of service of a copy thereof upon each party to the proceeding.

Subdivision (g) of section 201.12 of such Rules is

hereby amended to read as follows:

(g) Unless a party files exceptions to the decision of the Director within [ten] fifteen working days after receipt thereof, that decision will be final.

Paragraph (5) of subdivision (g) of section 202.4 of

such Rules is hereby amended to read as follows:

(5) If an employee organization, whether the [requisite] showing of interest requirement, as set forth in sections 201.3 and 201.4 of these Rules, is met.

Subdivision (c) of section 204.10 of such Rules is hereby amended to read as follows:

(c) Within [five] 15 working days after receipt of a decision of the Director dismissing a charge because the facts alleged do not, as a matter of law, constitute a violation of the Act, the charging party may file with the Board an original and four copies of a statement in writing setting forth his appeal from the decision, together with proof of service of a copy thereof upon each respondent. The statement shall set forth the reasons for the appeal.

Subdivision (b) of section 207.7 of such Rules is hereby

amended to read as follows:

(b) Additional Lists. If a party determines that more than two names on a panel list are unacceptable, a request by such party for an additional panel list shall be filed with the Director of Conciliation within the ten-day time period established for selection and preferential ranking. A copy of such request shall be sent to the other party simultaneously. Each party shall have the right to request one additional list, and consequently, no party shall receive more than three panel lists. Pursuant to the selection process, if the parties fail to select an arbitrator after the submission of a third panel list, the Director of Conciliation shall take whatever steps are necessary to designate an arbitrator.

Section 214.2 of such Rules is hereby amended to read as follows:

Section 214.2 Filing of Reports by Public Employers. Every public employer [who] which grants recognition to an employee organization, including every local government that has obtained a determination by the Board that its provisions and procedures are

substantially equivalent to the provisions and procedures set forth  
in the Act and this Chapter and public employee organizations that are  
recognized or certified, shall file with the Board such reports as the  
Board shall require.