7-8-1982

State of New York Public Employment Relations Board Decisions from July 8, 1982

New York State Public Employment Relations Board

State of New York Public Employment Relations Board Decisions from July 8, 1982

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2A-7/8/82
BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK and UNITED FEDERATION OF TEACHERS,	BOARD DECISION AND ORDER
Respondents,	
-and-	Case No. U-5792
LAWRENCE J. WYETZNER,	
Charging Party.	

JACK SCHLOSS, ESQ., for Board of Education of the City School District of the City of New York

JAMES R. SANDNER, ESQ., for United Federation of Teachers

LAWRENCE J. WYETZNER, pro se

On December 3, 1981, Lawrence J. Wyetzner (charging party) filed an improper practice charge alleging that violations of §209-a.1(a), (b) and (c) of the Act had been committed by the Board of Education of the City School District of the City of New York (District) and the United Federation of Teachers (UFT). Determining that the alleged violations and factual details in support were unclear, the Director instructed the assigned hearing officer to obtain more information at a conference held on January 7, 1982.

At the conference, the charging party advised that his charge against the District was based upon an alleged pattern of "harassment" by his principal in violation of certain contractual provisions and that this pattern began in September 1981 and continued to date. Since it was not clear that this "harassment" stemmed from the exercise of any rights protected by the Act, the assigned hearing officer requested further details from the charging party. Thereafter, the charging party alleged that the harassment was a result of his filing the improper practice charge.

The charge against the UFT alleged that the UFT has not acted to protect him from the alleged "harassment", notwithstanding undisputed evidence submitted by the UFT that it was proceeding to arbitration with his grievance. Further clarification by the charging party merely supports an allegation that the UFT has failed to take sufficient steps to "end the harassment" and expunge materials from his file.

By decision dated February 26, 1982, pursuant to §204.2(a) of the Rules, the Director dismissed the charge for failure to establish a prima facie violation of the Act. He concluded that any conduct by the principal allegedly in violation of contract would not be within PERB's jurisdiction. He also concluded that any claim that the alleged improper practice by the District was prompted by the filing of this improper practice charge is patently defective because (1) the complained of conduct began long before the charge, and (2) this basis for alleging an improper practice charge was only asserted after the charging party was

advised that the charge was deficient. The Director also concluded that the charge against the UFT based upon any claim of breach of the union's duty of fair representation was deficient since there was no allegations of fact of grossly negligent or irresponsible action by the union.

This matter comes to us on exceptions filed by the charging party which the District objects to as untimely. The Director's decision dismissing the charge was received by the charging party by certified mail on March 13, 1982. Pursuant to §204.10(c) of this Board's Rules, exceptions are required to be filed within five working days after such receipt. Pursuant to §204.12 of this Board's Rules, any request for extension of time to file such exceptions must be made at least three working days before the expiration of the time for filing such exceptions.

By letter dated March 21, 1982, and received by this agency on March 24, 1982, the charging party requested an extension of time to file exceptions. This request for an extension was received more than five working days after the decision was received. By letter dated March 29, 1982, the Deputy Chairman denied the request for an extension but stated that if no objection was filed by the other parties, exceptions could be filed by April 16, 1982. Thereafter, the attorney for the District objected to any consideration of untimely exceptions. The

charging party's exceptions were filed on April 16, 1982.

On these facts we find the exceptions of the charging party to be untimely. Even if we were to consider such exceptions on the merits, we would agree with the Director that the charge, as amplified by the charging party, fails to set forth facts which constitute a prima facie violation of the Act. For these reasons, we affirm the dismissal of the charge.

DATED: July 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 BOARD OF EDUCATION OF SEWANHAKA CENTRAL HIGH SCHOOL DISTRICT, Employer, -and- SEWANHAKA SCHOOL EMPLOYEES ASSOCIATION, Petitioner, -and- CIVIL SERVICE EMPLOYEES ASSOCIATION, NASSAU EDUCATIONAL CHAPTER, Intervenor.	#2B-7/8/82 BOARD DECISION AND ORDER CASE NO. C-2392

DOUGLAS E. LIBBY, ESQ., for Employer

BARBARA J. JOHNSON, ESQ., for Petitioner

JOSE SANCHEZ, for Intervenor

The Sewanhaka School Employees Association (Association) filed a petition for certification as the representative of a unit of noninstructional employees of the Board of Education of the Sewanhaka Central High School District (District). These employees are currently represented by the Nassau Educational Chapter of the Civil Service Employees Association (CSEA), but there is some question as to the scope of the existing unit. The recognition clause of the contract between the District and CSEA excludes temporary and substitute personnel but their rate of pay is included in the salary schedule appended to the contract. No unit was agreed upon by the parties, leaving the Acting Director of Public

Employment Practices and Representation (Acting Director) with the responsibility of making a unit determination.

The Acting Director considered certain basic facts as to the nature of the employment of temporary and substitute noninstructional employees to be controlling.[1/] He determined that, as a group, the temporary and substitute noninstructional employees of the District worked fewer than 20 hours a week, averaging only eight and a half hours of work a week. Moreover, he determined the return rate of those employees from year to year was only 37%, and not one of them worked more than ten weeks in a single year. On these facts, he concluded that they were casual employees who have no representation rights under the Taylor Law,[2/] and he excluded them from the unit.

The matter now comes to the Board on the exceptions of CSEA. It asserts that the Acting Director exceeded his authority in excluding temporary and substitute employees from the unit because the parties had not presented any dispute concerning the unit to him. This assertion overlooks the position of the District which put in issue the question of whether some of the substitute and temporary personnel were employees within the meaning of the Taylor Law.

CSEA also complains that the Acting Director should have adjourned the hearing, which was held on February 25, 1982, so that it could have been represented by an attorney rather than by its

---

[1/] The CSEA asserts that it had de facto recognition as to these employees by virtue of the wage provisions applicable to them in the contract and that on that basis the unit should include them. We do not agree.

[2/] In support of this conclusion, he cited decisions of this Board in State of New York, 5 PERB ¶3022 (1972); Syracuse CSD (King), 6 PERB ¶3083 (1973); BOCES III, Suffolk County, 15 PERB ¶3015 (1982).

Statewide Organizer. It argues that it was not aware that a hearing had been scheduled for February 25, 1982, but only a continuation of the pre-hearing conference held on February 1, 1982, and that, therefore, it came without an attorney to what it expected to be a pre-hearing conference. In this connection, it notes that it filed a motion on the day after the hearing to stay all further proceedings. According to CSEA it was inappropriate to issue a decision without first disposing of the motion.

Having reviewed the record, we conclude that CSEA was not denied an opportunity to be represented by Counsel at the hearing. The record shows that on December 28, 1981, it was given notice that there would be a hearing on February 25, 1982. We also conclude that it was not error for the Acting Director to issue his decision on the unit question without issuing a separate ruling on CSEA's motion. It is plain that in issuing his decision, the Acting Director, by implication, considered the motion and rejected it.

Finally, on the merits, we affirm the findings of the Acting Director and his conclusions of law. The evidence shows that the temporary and substitute noninstructional personnel of the District are casual employees who are not entitled to representation and were, therefore, properly excluded from the designated unit.

NOW, THEREFORE, WE ORDER that there be an election by secret ballot among the employees of the District in the unit found to be appropriate who were employed on the payroll date immediately preceding the date of this decision. WE

FURTHER ORDER that the District submit to the Director, as well as to the Association and CSEA, within ten days of the date of this decision, an alphabetized list of all employees in the unit found to be appropriate who were employed on the payroll date preceding the date of this decision.

DATED: July 8, 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	:	#2C-7/8/82
BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK,	:	
Respondent,	:	BOARD DECISION
-and-	:	AND ORDER
RICHARD R. BEHRENS,	:	
Charging Party.	:	CASE NO. U-5765

THOMAS A. LIESE, ESQ., for Respondent

MARVIN DATZ, for Charging Party

This matter comes to us on purported exceptions to the hearing officer's decision dismissing the charge filed in this proceeding for failure to prosecute and for abuse of procedure. On November 16, 1981, Richard R. Behrens (charging party) filed an improper practice charge against the Board of Education of the City School District of the City of New York (District). Marvin Datz was designated as his representative.

By notice issued December 7, 1981, the matter was scheduled for a pre-hearing conference on January 7, 1982, in New York City. By letter dated December 20, 1981, Datz requested that the District be directed to release him from work to attend the conference, without loss of pay. He was informed that the direction he requested could not be given and that the conference remained as scheduled.

Datz then requested that the conference be scheduled for a time when school was not in session, which request was denied.

On the morning of the scheduled conference, Datz telephoned our New York City office and left a message that he was ill and would not attend the conference. The charging party also telephoned the New York City office that morning and told the hearing officer that he would not attend the conference without Datz. The District's representative was present that morning for the conference.

By letter dated January 11, 1982, the hearing officer requested the charging party and Datz to furnish documentation of an illness which justified the inability to attend the conference and the absence of any notice prior to the conference date.

Datz thereafter submitted certain statements which the hearing officer determined to be inadequate both to establish his illness as justification for not appearing and as justification for the failure of either Datz or the charging party to notify him prior to the conference date. The hearing officer accordingly dismissed the charge for failure to prosecute and for abuse of procedure.

By letter dated February 19, 1982, addressed to the Chairman of this Board, Datz purports to take exception to the hearing officer's decision in this proceeding. The letter does not comply

with §204.10 of this Board's Rules of Procedure relating to the content of exceptions to be filed with this Board. Datz was notified by letter dated February 24, 1982 that it was not clear whether his letter constituted exceptions in this case. He was requested to advise whether he wished his letter to be treated as exceptions. No response by Datz has been received.

We have recently had occasion to state, with regard to Mr. Datz and Mr. Behrens, that their conduct "evidences a pattern of defiant attempts to ignore the procedures of this Board and to disrupt and abuse its processes" (Board of Education and Attendance Teachers Organizing Committee, Case No. C-2002 and other cases, 15 PERB ¶3042). The conduct by Datz and Behrens in this case is further evidence of that pattern.

For the reasons set forth in the hearing officer's decision, we agree that Datz's documentation in support of his asserted inability to attend the conference due to illness is unpersuasive. We also conclude that his disregard of §204.7(b) of our Rules regarding requests for adjournment cannot be countenanced.

We therefore affirm the dismissal of the charge herein for failure to prosecute and for abuse of procedure.

DATED: July 7, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

7636

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of AUBURN INDUSTRIAL DEVELOPMENT AUTHORITY, Employer, -and- TEAMSTERS LOCAL UNION 506, Petitioner.	#2D-7/8/82 DECISION ON MOTION CASE NO. C-2313

This matter comes to us on the motion of the Auburn Industrial Development Authority (Authority) for permission to file late exceptions to a decision of the Acting Director of Public Employment Practices and Representation directing that an election be held among the maintenance workers of the Authority. Teamsters Local Union 506, Petitioner herein, opposes the motion.

On May 28, 1982, the law firm which was representing the Authority requested and received a 10-day extension of time during which to file exceptions. The reason for the extension was that the member of the firm who had actually appeared on behalf of the Authority was on vacation. On June 15, 1982, another attorney wrote to this Board on behalf of the Authority asking for a further extension of time during which to file exceptions on behalf of the Authority. That request was posted two days late under the requirements of §201.12(d) of our Rules of Procedure.

7637

In his supporting affidavit the Authority's attorney states the vacation of the Authority's original attorney, which occasioned the first request for an extension, was brought about by difficulties involving his physical, mental and emotional health. This vacation, which was to run from mid-May through June 1, 1982, had been expected to facilitate his resumption of his responsibilities, including the preparation of the exceptions. The attorney returned to his practice on June 1, but by June 10 it had become apparent to him and his partners that his physical and emotional ill health would not permit him to prepare the exceptions. His partners therefore contacted the present attorney on Friday, June 11, and asked him to accept the case. The present attorney reviewed the file over the weekend and accepted the case on Monday, June 14. His request for the second extension was posted on the following day. The Teamster's attorney objects to a second extension.

On the facts presented, we grant the motion. The disabling illness of the original attorney who handled the case followed by the prompt request for the extension constitute a basis for the exercise of our discretion to extend the time "because of extraordinary circumstances" (§201.12(d) of Rules of Procedure).

NOW, THEREFORE, WE ORDER that exceptions and briefs will be timely if filed with this Board and served upon the attorney for the Petitioner by July 16, 1982. If the papers are filed or served by mail, they should be postmarked no later than July 14, 1982.

DATED: July 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 NEW YORK STATE PUBLIC EMPLOYEES FEDERATION, Respondent, -and- HARRY FARKAS, Charging Party.	#2E-7/8/82 DECISION ON MOTION CASE NO. U-5703

This matter comes to us on the motion of Harry Farkas for reconsideration of our decision dismissing his exceptions to a hearing officer's decision dismissing his charge that the Public Employees Federation (PEF) improperly refused to represent him in connection with his protest of restrictions imposed upon the taking of Civil Service competitive examinations. We have carefully reviewed the allegations in support of the motion and we find no reason to grant it.

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

DATED: July 7, 1982
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

7640

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2F-7/8/82
SCHUYLER-CHEMUNG-TIOGA BOCES, Respondent,	:	BOARD DECISION AND ORDER
-and-	:	
SCHUYLER-CHEMUNG-TIOGA BOCES EDUCATIONAL SUPPORT STAFF ASSOCIATION, Charging Party.	:	CASE NO. U-5540

SHULL & COYLES (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 (ESSA) to a hearing officer's decision dismissing its charge that Schuyler-Chemung-Tioga BOCES (BOCES) violated §209-a.1(d) of the Taylor Law in that it unilaterally decided to pay its nonprofessional employees on the basis of 27 pay periods during the 1981-82 school year.

On July 19, 1981, BOCES announced that there would be 27 pay periods for its nonprofessional employees during the 1981-82 school year. These employees are in a negotiating unit represented by ESSA. ESSA asserts that the announcement constituted a unilateral change of a long-standing past practice that there be

26 pay periods each year for nonprofessional employees.[1/]

The charge was dismissed by the hearing officer because he found that there was no past practice which obligated BOCES to provide 26 annual pay periods for its nonprofessional employees. He determined that the nonprofessional employees were paid on 26 days during the 1978-79, 1979-80 and 1980-81 school years, but that this did not evidence a past practice of 26 pay periods regardless of the circumstances. Rather, according to the hearing officer, BOCES' past practice over a seven-year period, was to synchronize the pay periods of its nonprofessional employees and its teachers and thus the number of nonprofessional pay periods was determined by the date on which Labor Day had fallen. The hearing officer found that the 27 pay periods in 1981-82, like the 26 days in the three prior school years, reflected the date on which Labor Day fell in the particular year. Hence, there was no change in the basic practice in 1981-82.

Having reviewed the record, we determine that ESSA's exceptions do not indicate any error in the hearing officer's findings of fact and conclusions of law and we find none. Accordingly, we affirm the hearing officer's decision.

1/ There is no allegation that ESSA had ever sought to negotiate the number of annual pay periods of the nonprofessional employees of BOCES or that BOCES ever refused a request to negotiate the subject.

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

DATED: July 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	#2G-7/8/82
PLAINVIEW-OLD BETHPAGE PUBLIC LIBRARY, Employer,	BOARD DECISION AND ORDER
-and-	
PLAINVIEW-OLD BETHPAGE LIBRARY ASSOCIATION, Petitioner.	CASE NO. C-2225

On March 9, 1981, the Plainview-Old Bethpage Library Association (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 Plainview-Old Bethpage Public Library.

In his decision dated April 21, 1982,[1/] the Director found the following unit to be appropriate:

Unit B

Included: Full-time and part-time employees in the following positions: Typist Clerk, Senior Library Clerk, Clerk, Clerical Aide, Page, Cleaner and Maintainer.

Excluded: Senior Library Clerk (Community Services Department Head), Senior Library Clerk (Business Office), Secretary to the Library Director, full-time high school students and all other employees.

1/ In the same decision, the Director also established a Unit A consisting of the following:

Unit A Included: Full-time and part-time employees in the following positions: Administrative Assistant, Librarian I, Librarian II, Community Services Information Assistant, Principal Library Clerk (Circulation Department Head), Principal Library Clerk (Technical Services Department Head) and Senior Library Clerk (Community Services Department Head).

Excluded: All other employees.

In a separate election, these employees voted in favor of representation by petitioner and we have this day certified it as the representative of the employees in that unit.

A secret ballot election was held on June 21, 1982. The results of the election indicate that a majority of eligible voters in Unit B do not desire to be represented by the petitioner.[2/]

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

Dated: Albany, New York
July 8, 1982

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

2/ Of the 43 ballots cast, 12 were for and 30 were against representation by the petitioner. One ballot was challenged.

STATE OF NEW Y K
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#3A-7/8/82
PLAINVIEW-OLD BETHPAGE PUBLIC LIBRARY, Employer,	:	Case No. C-2225
- and -	:	
PLAINVIEW-OLD BETHPAGE LIBRARY 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

Plainview-Old Bethpage Library Association

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

Unit A -Included: Full-time and part-time employees in the following positions: Administrative Assistant, Librarian I, Librarian II, Community Services Information Assistant, Principal Library Clerk (Circulation Department Head), Principal Library Clerk (Technical Services Department Head) and Senior Library Clerk (Community Services Department Head).

Excluded: All other employees.

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

Plainview-Old Bethpage Library 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 8th day of July , 1982
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

7646

PERB 58.4

STATE OF NEW Y K
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#3B-7/8/82
LIVERPOOL CENTRAL SCHOOL DISTRICT, Employer,	Case No. C-2386
- and -	
UNITED LIVERPOOL FACULTY 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

United Liverpool Faculty Association

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

Unit: Included: All per diem substitute teachers who have received a reasonable assurance of continuing employment as referenced 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

United Liverpool Faculty 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 7th day of July, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

7647

PERB 58.4