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7-22-1982

## State of New York Public Employment Relations Board Decisions from July 22, 1982

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from July 22, 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

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In the Matter of :  
 : #2A-7/22/82  
FACULTY ASSOCIATION OF HUDSON :  
VALLEY COMMUNITY COLLEGE, :  
 : BOARD DECISION AND ORDER  
Respondent, :  
- and - : CASE NO. U-5586  
RAYMOND A. DANSEREAU, :  
Charging Party. :

\_\_\_\_\_  
REX C. TROWBRIDGE, for Respondent

RAYMOND A. DANSEREAU, pro se

This matter comes to us on the exceptions of the Charging Party to a decision of the Hearing Officer that the Respondent did not violate its duty of fair representation. The Charging Party, Raymond A. Dansereau, charged that the Faculty Association of Hudson Valley Community College improperly refused to take his grievance to arbitration, violating §209-a.2(a).

Dansereau filed the grievance on December 29, 1980 after a supervisor, the chairperson of his teaching department at the College, issued a memorandum on December 16, 1980 which was critical of him. In his grievance, he demanded as relief: (1) retraction of the critical memorandum, (2) a reprimand of the chairperson who issued the memorandum, and (3) an investigation into the facts contained in the memorandum. When the grievance was denied at Step 1, Dansereau appealed to the second step on February 2, 1981.

Dansereau did not inform the Association of his initiation of the grievance. The Association first became aware of the existence of the Dansereau grievance when the President of the College notified the Association President that a Step 2 hearing was scheduled for March 26, 1981. After being so notified, the Association investigated the matter, met with the College President, and persuaded the College Administration to withdraw the memo which Dansereau initially grieved.<sup>1/</sup> Furthermore, the College President assured the Association that measures would be taken to prevent recurrence.

Apparently this did not satisfy Dansereau and a Step 2 hearing was held as scheduled. The Association sent a representative but Dansereau chose to represent himself. On April 10, 1982, Dansereau received the Step 2 decision denying his grievance.<sup>2/</sup> On that day he first sought the Association's assistance because the College/Association contract provides that only the Association can proceed to arbitration, and he demanded that his case be brought to arbitration. The Association, upon advice of Counsel, decided on April 21, 1981 not to proceed to arbitration and it officially notified Dansereau of its decision on May 21, 1981. He had already been told on April 20, one day before the meeting at which the decision was

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<sup>1/</sup> The chairperson who issued the memo critical of Dansereau issued a subsequent memo on February 24, 1981 stating: "After lengthy discussions...regarding the best interests of the College, I hereby withdraw my memo of December 16, 1980."

<sup>2/</sup> The Step 2 decision, although it does mention the February 24, 1981 withdrawal of the memo, dismisses Dansereau's grievance on its merits.

officially made,<sup>3/</sup> that the Association was not disposed to take the grievance to arbitration. Dansereau had declined an invitation to attend that meeting.

On these facts, the Hearing Officer dismissed the charge. Mr. Dansereau has filed three exceptions.

First, Dansereau asserts that the Association executive committee did not meet to decide on the merits of his grievance until April 21, the final day of the contractual five working days' limit for appealing to arbitration. Since five working days is a short threshold limitation period, we cannot find that the mere fact that the Association executive committee met on the final day is evidence of casualness regarding Dansereau's grievance. Moreover, Dansereau did not provide the committee with all documents relating to his grievance until 10:00 a.m. on that day. In Nassau Educational Chapter,<sup>4/</sup> the employee organization did not meet and evaluate the grievance for 13 months; here reasonable effort was made for a timely review of the merits. Accordingly, this exception is rejected.

Mr. Dansereau for the first time in this proceeding raises as his second exception that the Association violated his rights when it interceded on his behalf with the College before he requested Association assistance. The Taylor Law encourages an employee organization, as the representative of all employees

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3/ The College/Association agreement allows the Association five days to formally file an appeal to arbitration. April 21 was the final day of this particular five day period.

4/ Nassau Educational Chapter of the Syosset Central School District Unit, CSEA, Inc., 11 PERB ¶3010 (1978).

in the unit, to address with the employer inequities as they may arise even in one instance. Here the Association has done just that by convincing the employer that the best interest of the College is served by withdrawing the offending memo and guaranteeing that similar memos will not be issued in the future to unit employees. Grievances affect all employees in the unit, even when they arise in the context of an individual grievance. The employee organization is safeguarding not only the particular employee's interest, but also the interests of the entire bargaining unit.<sup>5/</sup> Dansereau alleges a violation of §209-a.2(a) of the Act. That section precludes the employee organization from interfering with, restraining or coercing public employees in the exercise of their §202 rights. Accordingly, this exception is rejected.

Dansereau in his third exception claims he was not promptly informed of the Association's decision not to proceed with his grievance. This decision was made at its Executive Committee meeting of April 21, 1982. Mr. Dansereau was formally notified on May 21, 1982. In Nassau Educational Chapter, supra, we found 13 months to be too long for a member to wait before finding out his grievance would not be pursued. Here the delay was six weeks. We may also note that in Nassau the member had

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5/ NLRB v. Weingarten, Inc., 420 U.S. 251 (1975): 1001 Comp. Cas. 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015.

been led to believe during those 13 months that his grievance would be handled. In the instant case the record shows that Dansereau had been advised by the Association president that the Association was not disposed to taking his grievance to arbitration even before inviting Dansereau to the executive board meeting. Moreover, Dansereau could have had earlier notice if he had not declined the invitation to attend the meeting. We find that no prejudice has been suffered by Dansereau due to the Association's six week delay in notice. Accordingly, this exception is rejected.

We affirm the action of the hearing officer following Brighton Transportation Association, 10 PERB ¶3090 (1977), where we held that the 209-a.2(a) obligation is violated when an employee organization, either by reason of improper motives or of grossly negligent or irresponsible conduct, has failed to consider or evaluate a grievance complaint presented to it. No such behavior occurred here. In so defining the duty of fair representation, we recognize and do not seek to restrict the implied authority of the representative to make a fair and reasonable judgment as to whether a particular complaint is meritorious or is otherwise worthy of prosecution by it as a grievance. Nassau Educational Chapter, supra.

On review of the record we conclude that there is no evidence of improper motives, gross negligence, or irresponsible conduct by the Association.

NOW, THEREFORE, WE AFFIRM the decision of the Hearing Officer finding no violation of §209-a.2(a) of the Taylor Law, and

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WE ORDER that the exceptions herein be, and they hereby are,  
DISMISSED.

DATED: July 21, 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-7/22/82  
TOWN OF GATES, :  
Respondent, : BOARD DECISION AND ORDER  
-and- : CASE NO. U-5521  
ALBERT SAVA, :  
Charging Party. :  
:

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HARRIS, BEACH, WILCOX, RUBIN AND LEVEY  
(CARL R. KRAUSE, ESQ., of Counsel) for  
Respondent

CHRISTIANO AND BRENNAN (ALBERT R.  
CHRISTIANO, ESQ., of Counsel), for  
Charging Party.

The charge herein alleges that Albert Sava, an employee of the Highway Department of the Town of Gates, was first suspended and then discharged because he engaged in activities that are protected by §202 of the Taylor Law. Sava was suspended for 30 days without pay by Alfred Leone, the Town's Superintendent of Highways, on May 30, 1981, and 11 days later he was discharged by Jack Hart, the Town Supervisor. The matter now comes to us on the exceptions of the Town to a hearing officer's determination that the suspension and dismissal constituted violations of §209-a.1(a) and (c) of the Taylor Law.

It is the Town's position that Sava's insubordinate behavior on May 28, 1981 was a legitimate, non-discriminatory reason for his

suspension and discharge. The hearing officer found that Sava would not have been suspended and discharged but for his activities on behalf of the successful organizing efforts of Teamsters Local Union No. 118 (Local 118). Relying, in part, on her determinations as to the credibility of Sava and Leone, she found that the incident on May 28, 1981 was provoked by Leone who, she found, acted with animus against the union in suspending Sava and recommending his discharge. Upon review of the record, we conclude that it affords no reasonable basis for rejecting the hearing officer's credibility determinations. Accordingly, and upon the entire record, we affirm the findings of fact and conclusions of law of the hearing officer.

The hearing officer's findings may be summarized as follows:

Sava had been employed by the Highway Department for seven years during which time he had a good record. There had been some difficulties between him and Leone since the latter's appointment as Superintendent of Highways four years earlier but there is no record of reprimands prior to March 1981, when Sava began to take an active role on behalf of Local 118's efforts to organize the employees of the Town Highway Department. Leone, who was unsympathetic to Local 118's efforts, tried to discourage the employees from supporting Local 118 by threatening layoffs if it won the representation election held on May 29, 1981.

The difficulties between Sava and Leone were exacerbated by a story that appeared in a newspaper on May 7, 1981 which

covered Local 118's organizing activities. The story named Sava and quoted his complaints about Leone. Thereafter, Leone assigned Sava to less pleasant duties than he had in the past, criticized him unnecessarily and made ominous comments about Sava's job not being secure.

At approximately 11:00 a.m. on May 28, 1981, the day before the election, Leone directed Sava to clean a room used by the garage employees for coffee and lunch breaks. This assignment was neither a regular part of Sava's job duties nor of any other Town employee. Usually the room was cleaned by the employees who ate there.

Sava reacted as if the assignment were a deliberate <sup>1/</sup>provocation. He refused to clean the room and announced that refusal in obscene language. Leone responded with obscenities of his own and presented Sava with an ultimatum: Either Sava would clean the room by the end of the lunch period or he would be suspended for the afternoon. During the course of their argument, Leone told Sava that he would be fired if Local 118 won the election the following day. Sava did not clean the room and he refused to leave the premises when ordered to do so. Leone then called the police who removed Sava from the garage.

The incident was not mentioned on the following day, the day of the election, when Sava returned to work. He performed all

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<sup>1/</sup> The hearing officer concluded that it was.

his assignments that day and cleaned the coffee and lunch room.

On the day after the election, which was won by Local 118, Leone notified Sava that he was suspended without pay by reason of his conduct on May 28, 1981. At the hearing, Leone acknowledged that it was not until May 30 that he decided to suspend Sava. He then reported Sava's suspension and the alleged reason for it to Town Supervisor Hart, and Hart discharged Sava because of his "continued insubordination".

When asked to explain the reference to "continued insubordination", Hart testified that he had received reports of other disciplinary problems involving Sava during the last two or three months. Of these, he could identify only one, a report from Leone that Sava had refused a direction to grease a truck. Based upon the evidence in the record, the hearing officer determined that Leone's report was false.

#### DISCUSSION

We conclude that but for Sava's active support of Local 118 his suspension and discharge would not have occurred. While we do not condone Sava's conduct on May 28, it was not the cause of his suspension and discharge. The incident must be viewed against the evidence of Leone's animus against the union: Leone had displayed his hostility to Local 118 since March 1981 and had indicated that if the employees chose to be represented by Local 118 some of them would lose their jobs. That hostility focused on Sava after the May 7, 1981 newspaper story. The incident of

May 28 was a culmination of that hostility and of Leone's harassment of Sava. On May 30, 1981, Leone followed through on the threat he made two days earlier when he said that Sava would be fired if Local 118 won the election. He then decided to suspend Sava and he reported the suspension and his alleged reason for it to Hart. Acting in reliance upon Leone's report and upon an earlier, false report by Leone as to another instance of insubordination by Sava, and perhaps, upon other unspecified reports which would be associated with the time of the election campaign, Hart fired Sava.

Clearly, Leone's action of May 30 in suspending Sava was coercive and discriminating, and it was improperly motivated. As Hart's action was based upon reports from Leone, it was tainted by the improper motivation of Leone. Elmira CSD, 14 PERB ¶3015 (1981); Ellenville CSD, 9 PERB ¶4527, aff'd 9 PERB ¶3067 (1976). The suspension and dismissal constituted violations of §209-a.1(a) and (c) of the Act.

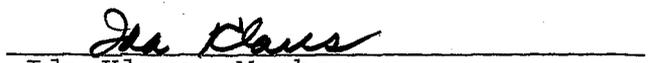
NOW, THEREFORE, WE ORDER the Town of Gates to:

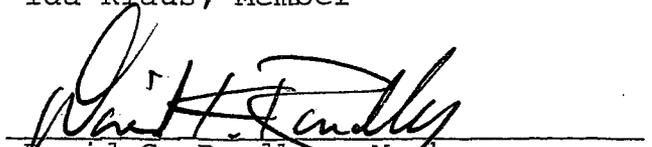
1. Reinstate Albert Sava to his former position with full back pay and benefits from the date of his suspension, less earnings from other employment, plus interest at three percent per annum on the back pay;

2. Cease and desist from interfering with, restraining or coercing Albert Sava or its other employees in the exercise of rights guaranteed by §202 of the Taylor Law for the purpose of depriving them of such rights;
3. Cease and desist from discriminating against Albert Sava or its other employees for the purpose of encouraging or discouraging membership in or participation in the activities of an employee organization;
4. Conspicuously post the attached notice at all work locations normally used to communicate with its employees.

DATED: July 21, 1982  
Albany, New York

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

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

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

# 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 that the Town of Gates:

1. Will reinstate Albert Sava to his former position with full back pay and benefits from the date of his suspension, less earnings from other employment, plus interest at three percent per annum.
2. Will not interfere with, restrain or coerce Albert Sava or other employees in the exercise of their rights guaranteed in Section 202 of the Act for the purpose of depriving them of such rights.
3. Will not discriminate against Albert Sava or other employees for the purpose of encouraging or discouraging membership in, or participation in the activities of an employee organization.

..... Town of Gates  
Employer

Dated .....

By .....  
(Representative) (Title)

*This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.*

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Application of the  
TOWN OF RYE  
for a determination pursuant to Section  
212 of the Civil Service Law.

#2C-7/22/82

DOCKET NO. S-0055

BOARD ORDER

At a meeting of the Public Employment Relations Board held on the 21st day of July, 1982, and after consideration of the application of the Town of Rye made pursuant to Section 212 of the Civil Service Law for a determination that its Resolution of February 20, 1968 establishing a Town of Rye Public Employment Relations Board, as last amended by a resolution of the Town Board of the Town of Rye adopted on June 15, 1982, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board, it is

ORDERED, that said application be and the same hereby is approved upon the determination of the Board that the Resolution aforementioned, as amended, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board.

DATED: Albany, New York  
July 21, 1982

*Harold R. Newman*  
HAROLD R. NEWMAN, Chairman

*Ida Klaus*  
IDA KLAUS, Member

*David C. Randles*  
DAVID C. RANGLES, Member

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-7/22/82

In the Matter of the

PLAINEDGE FEDERATION OF TEACHERS

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

BOARD DECISION

AND ORDER

CASE NO. D-0204

This matter comes to us on the application of the Plainedge Federation of Teachers (Federation) for restoration of the dues and agency shop fee deduction privileges afforded under Section 208 of the Civil Service Law. The Federation's privileges had been suspended indefinitely by an order of this Board dated September 10, 1981. At that time we determined that the Federation had violated CSL §210.1 by engaging in a strike against the Plainedge Union Free School District on September 4 and September 18, 1980. We ordered that its dues deduction privileges and agency shop fee deduction privileges, if any, should be suspended indefinitely "provided that the Federation may apply to this Board at any time after seventy-five per cent (75%) of such dues and fees would ordinarily have been deducted, for the full restoration of such privileges". The application was to be supported by proof of good faith compliance with CSL §210.1 since the violation found, and accompanied by an affirmation, that the Federation no longer asserts the right to strike, as required by CSL §210.3(g).

The Federation has submitted an affirmation that it does not assert the right to strike against any government and we

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have ascertained that it has not engaged in, caused, insti-  
gated, encouraged or condoned a strike against the Plainedge  
Union Free School District since the date of the above-stated  
violation.

NOW, THEREFORE, WE ORDER that the indefinite suspension of  
the dues and agency shop fee deduction privileges of the Plainedge  
Federation of Teachers be, and hereby is, terminated.

DATED: July 22, 1982  
Albany, New York

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

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

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

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2E-7/22/82

In the Matter of  
UNITED FEDERATION OF TEACHERS,  
Respondent,

BOARD DECISION ON MOTION

-and-

ANNA-MARIA THOMAS,

CASE NO. U-5402

Charging Party.

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

KATHY H. ROCKLEN, ESQ., for Charging Party

On April 12, 1982, we issued a decision rejecting the charging party's exceptions to a hearing officer's decision dismissing her charge. We rejected her exceptions because she failed to serve them on the respondent and failed to respond to a letter of March 3, 1982 from our Deputy Chairman calling this omission to her attention and asking for an explanation.

On April 19, 1982, the charging party's present attorney discussed our decision with our Deputy Chairman. On that same date, and based upon advice given to her in that discussion, she wrote to the Deputy Chairman to confirm her intention to make a motion for reconsideration.

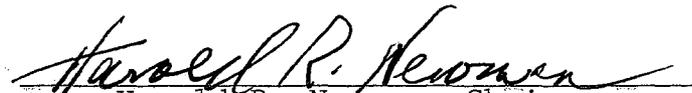
A motion for reconsideration was not made until June 21, 1982. In her affidavit in support of the motion, the charging party states

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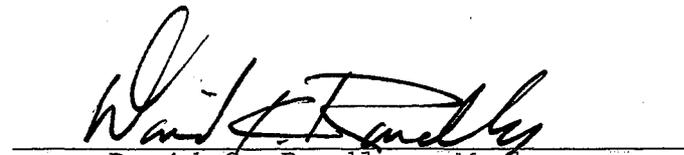
that although represented by an attorney at the hearing, she was no longer represented at the time the exceptions were due and that she had filed them herself. She states further that after receiving our decision, she hired her present attorney. However, no explanation is offered for her failure to respond to our Deputy Chairman's letter of March 3, 1982. Nor is any reason given for waiting more than two months from the date of her letter indicating her intention to make a motion for reconsideration.

In view of the foregoing, we find no compelling reason now to extend the time to receive the exceptions. Accordingly, the motion should be, and it hereby is, denied.

DATED: July 22, 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	:	#2F-7/22/82
WESTERN REGIONAL OFF-TRACK BETTING CORPORATION,	:	<u>BOARD DECISION AND ORDER</u>
Respondent,	:	<u>CASE NO. U-5413</u>
-and-	:	
FRANCES CAMPBELL,	:	
Charging Party.	:	

WILLIAM J. O'REILLY, ESQ., for Respondent  
PAUL A. FISCHER, ESQ., for Charging Party

This matter comes to us on the exceptions of the Western Regional Off-Track Betting Corporation (OTB) to the hearing officer's decision sustaining that part of an improper practice charge filed by Frances Campbell which alleged that the issuance of a memorandum by OTB to all its employees violated Civil Service Law §209-a.1(a), and dismissing the charge in all other respects.

The charging party alleged that the memorandum violated §209-a.1(a), (b) and (c) of the Act in that it restrained her right of communication with the newsmedia; that it attempted to designate a union spokesman for union members; and that it was an act of retaliation and discrimination specifically against Campbell for speaking out as a union representative on security problems. The OTB's answer asserted that the memorandum was based on the agreement reached with Local 222, SEIU, and denied that it constituted an improper practice.

Campbell is an assistant manager of an OTB betting parlor and a member of the executive board of Local 222, SEIU. A news story concerning a robbery at one of the OTB parlors quoted Campbell as saying that employees at OTB parlors "are very, very vulnerable". The story also stated that, according to "union and corporate officials", OTB bank deposits amount to \$1,000 to \$3,000 daily. OTB officials objected to the story on the ground that it was detrimental to security and could put employees in jeopardy. At a labor-management meeting, attended by seven of twelve executive board members of Local 222, SEIU, the "security situation" at the branches was discussed. The union representatives suggested different procedures for handling bank deposits and agreed to designate one spokesman to respond to inquiries concerning matters involving security. The union representatives also agreed that the OTB could issue a notice to employees.

The memorandum in question was issued on January 5, 1981 and is quoted in full in the hearing officer's decision. Of particular concern is that part which states:

In situations where the news media has contacted any of our employees of this Corporation for information regarding our corporate operations, such contacts shall be referred to Mr. James Morgan, President, Local 222, S.E.I.U. or Mr. Edward Carney, Director of Corporate Development.

The testimony indicates that both Local 222, SEIU, and the OTB were particularly concerned about statements in the news story concerning amounts of money and bank deposits. The president of the union testified that he understood that the memorandum

intended to direct that contacts by the media should be referred to the union president in the event of a holdup or robbery.

The hearing officer considered controlling the fact that the memorandum requires OTB employees to refer all contacts by news media for information regarding "corporate operations". Because of the breadth of that term, he concluded that it encompassed terms and conditions of employment, as well as matters committed to the discretion of OTB. Accordingly, he concluded that this interference with the rights of the employees, coupled with apparent sanctions, was inherently destructive of Campbell's rights as an employee and as a union representative. The hearing officer dismissed Campbell's charge in all other respects. The hearing officer directed OTB to rescind the memorandum, to cease and desist from such improper practice and to post a notice.

Campbell has not filed any exceptions to the hearing officer's report. The OTB has filed exceptions which challenge the finding of an improper practice in the absence of any finding of improper motivation by OTB in issuing the memorandum. The OTB asserts that it did not issue the memorandum for the purpose of depriving employees of their rights. It asserts that it was the common desire of OTB and Local 222, SEIU, to provide maximum security for the employees, which was the sole purpose and motive for the memorandum.

DISCUSSION

We reverse the hearing officer. A reasonable balance must be struck between the right of employees to express their legitimate concerns and the right of the public employer to protect the security of its operations. The memorandum issued by OTB was not intended to, nor does it, prohibit employee contact with news media regarding matters of concern to the employees relating to their terms and conditions of employment, including their safety. The phrase "corporate operations" must be read within the context of the memorandum as a whole and the understanding of it expressed by the union and management. We construe that phrase as relating to those highly sensitive aspects of betting parlor operations which should not, in the interest of security, be freely publicized.

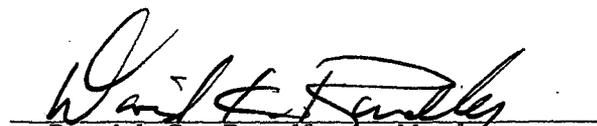
The testimony makes clear that both the union and OTB were concerned about statements in the news story related to amounts of money deposited in banks. Concern for the security of the offices is apparent on the face of the memorandum. Thus, we cannot conclude that this memorandum reasonably tends to have or did have a "chilling" effect on the right of employees to comment upon or criticize their working conditions. Accordingly, we cannot agree that the memorandum is inherently destructive of Campbell's rights. Therefore, in the absence of any evidence of improper motivation, we hold that the OTB did not commit an improper practice when, under the circumstances revealed in this record, it issued this particular memorandum.

ACCORDINGLY, WE ORDER that the charge herein be, and it  
hereby is, dismissed in its entirety.

DATED: July 21, 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 : #2G-7/22/82  
BOARD OF EDUCATION OF THE CITY SCHOOL :  
DISTRICT OF THE CITY OF NEW YORK, :  
Respondent, : BOARD DECISION  
: AND ORDER  
-and- :  
FRED GREENBERG, : CASE NOS. U-5155, U-5362,  
: U-5459 and  
Charging Party. : U-5654  
:

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THOMAS A. LIESE, ESQ., for Respondent

JOAN GOLDBERG, ESQ., for Charging  
Party

This matter comes to us on the exceptions of the charging party to the hearing officer's dismissal of four improper practice charges for failure to prosecute them. In her decision, the hearing officer details events related to her efforts to hold hearings on the charges, including several adjournments granted at the request of the charging party. In particular, she recounts events occurring in connection with a hearing scheduled for December 9, 1981, at which the charging party and his attorney failed to appear. The hearing officer's denial of the charging party's request for an adjournment of that hearing because of actual jury duty service is the basis of several of his exceptions.

The four charges were filed over a period of nine months between January and September, 1981. They all appear to relate to the same situation involving difficulties the charging party.

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was having with his school principal and alleged harassment by the principal. A hearing on the first two charges was held on May 7, 1981 at which he was represented by counsel. Charging party's case was not completed on that date. Several scheduled hearing dates were thereafter adjourned at the request of the charging party or his then counsel. After the adjournment of a hearing scheduled for November 5, 1981, because of charging party's alleged illness - the bona fides of which was challenged in a motion to dismiss subsequently filed by the Board of Education - the hearing officer scheduled a hearing for December 9, 1981.

On December 8, 1981, the charging party left a document in our New York City office which stated that he was required to be available for service as a juror in Supreme Court, Kings County, on the following day. In her decision, the hearing officer reports that she was advised by counsel to the Court that the charging party would be discharged from jury service to attend the hearing. She then advised the charging party and his counsel that she would not adjourn the hearing. Since the charging party did not appear at the hearing, the hearing officer granted the motion to dismiss for failure to prosecute.

In his exceptions, the charging party states that he was not, in fact, discharged from jury duty. He states that he did not receive any notice, either from the hearing officer or the court, that he was discharged from jury duty. He also questions whether the hearing officer could "legally" arrange his discharge. Other

matters are covered by his exceptions, but, in view of our disposition of the case, it is not necessary to consider them.

DISCUSSION

On the basis of the information that the hearing officer possessed on December 9, 1981, we would not find that she improperly dismissed the charges. However, the charging party has filed with his exceptions an affidavit in which he swears that he was not informed by the Court Clerk on December 8, 1981 that he was dismissed from jury duty on December 9, 1981, but, rather, he was told to report the next day and that he was not dismissed on December 9, 1981. He states that he did not learn of the hearing officer's contact with the court until after December 9, 1981. Inasmuch as we consider actual jury duty service to be a good and sufficient reason for granting an adjournment, and absent a basis for rejecting the charging party's proof that he was not dismissed from jury duty, we shall reverse the hearing officer's decision, reinstate the charges herein and remand these cases for further hearing.

In doing so, however, we must question the apparent practice of last minute requests for adjournment by the charging party. In particular, we note from material submitted by the charging party with his exceptions that he knew of his required jury duty some time prior to November 30, 1981. His failure, without apparent reason, to inform the hearing officer and the respondent until the day before the hearing constitutes an abuse of our procedures that should not be further condoned. Since it appears that he

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could have been discharged from jury duty if he had so requested, an earlier request for adjournment might have resulted in an arrangement which would have permitted the hearing to take place.

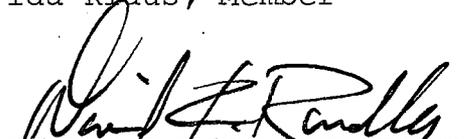
Upon remand, the hearing officer will schedule hearing dates, after consultation with the parties or their attorneys, which will not be adjourned except for the most extraordinary circumstances.

Accordingly, it is ORDERED that the hearing officer's decision is reversed; that the charges in these cases are reinstated; and that the proceedings are remanded for further hearing in accordance with this decision.

DATED: Albany, New York  
July 22, 1982

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2H-7/22/82

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

BOARD DECISION

Upon the Application for Designation of  
Persons as Managerial or Confidential,

ON MOTION

-and-

COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO,

Intervenor,

CASE NO. E-0716

-and-

ORGANIZATION OF STAFF ANALYSTS,  
TEAMSTERS LOCAL 237,

Intervenor,

-and-

SOCIAL SERVICE EMPLOYEES UNION  
LOCAL 371,

Intervenor.

In the Matter of

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

Employer,

CASE NO. C-2190

-and-

COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO,

Petitioner,

-and-

ORGANIZATION OF STAFF ANALYSTS,  
TEAMSTERS LOCAL 237,

Intervenor.

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This matter comes to us on the motion of the Board of Education of the City School District of the City of New York (District) for permission to file exceptions to an interim decision of the Assistant Director of Public Employment Practices and Representation. The interim decision of the Assistant Director denied a motion made by the District to stay two proceedings pending before him, one brought by the District to designate certain of its employees as managerial or confidential and the other brought by the Communications Workers of America to represent a unit consisting of some of those employees.

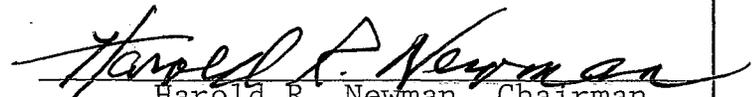
The District based its motion for a stay upon the fact that there is pending before the Board of Certification of the New York City Office of Collective Bargaining similar proceedings to designate as managerial or confidential employees of the City of New York having the same titles as those in the instant proceeding.

The Assistant Director denied the motion for a stay for several reasons, one being that the evidence already in the record before him showed that the position of each of the 115 employees is sui generis, necessitating specific findings as to each. In its motion to us, the District does not challenge this reason of the Assistant Director for denying the stay. In fact, in its brief in support of its proposed exceptions to the Assistant Director's interim decision, it urges that if a stay were granted "PERB will benefit because it will remove from its caseload a case which, if fully litigated, will require a great number of additional hearings . . . ."

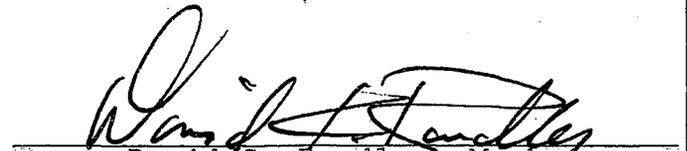
It is clear that regardless of the outcome of the proceedings before the Office of Collective Bargaining, it will be necessary for this agency to conduct further hearings to ascertain the duties and functions of each of the employees involved herein before the statutory criteria for designation as managerial or confidential can be applied. Accordingly, a stay of the proceedings pending before us would only result in unnecessary delay.

NOW, THEREFORE, WE ORDER that the motion of the District for permission to file exceptions to the interim decision of the Assistant Director denying its application for a stay of the proceedings be, and the same hereby is, DENIED.

DATED: July 22, 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 WALLKILL, : #3A-7/22/82  
Employer, :  
-and- : Case No. C-2414  
NEW YORK STATE FEDERATION OF POLICE, 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

New York State Federation of Police, Inc.

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

Unit: Included: All police officers, sergeants and lieutenants

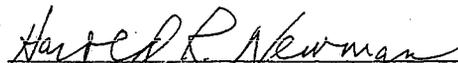
Excluded: All other employees of the employer

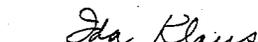
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with

New York State Federation of Police, Inc.

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 21st day of July , 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 :  
WANTAGH PUBLIC SCHOOLS, : #3B-7/22/82  
Employer, :  
-and- : Case No. C-2447  
WANTAGH UNITED 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

Wantagh United 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: Teacher Aides and Monitors

Excluded: All other employees

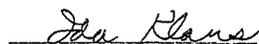
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with

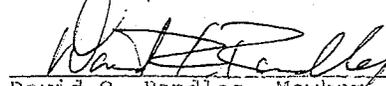
Wantagh United Teachers, NYSUT, AFT, AFL-CIO

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 21st day of July , 1982  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Kraus, member

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #3C-7/22/82  
TOWN OF ULSTER, :  
Employer, :  
- and - :  
LOCAL UNION NO. 445, INTERNATIONAL BROTHERHOOD : Case No. C-2453  
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & :  
HELPERS OF AMERICA, :  
Petitioner, :  
- and - :  
TOWN OF ULSTER POLICE PATROLMEN'S :  
BENEVOLENT ASSOCIATION, 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

Local Union No. 445, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America

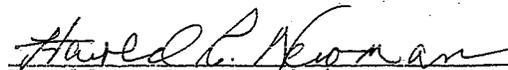
has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

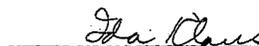
Unit: Included: Patrolmen, all constables regardless of rank, dispatchers and patrol supervisors.

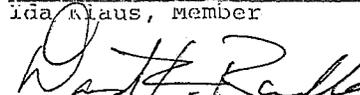
Excluded: Chief constable and constables in charge.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local Union No. 445, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America 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 21st day of July, 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 : #3D-7/22/82  
:   
BOARD OF EDUCATION OF THE CITY SCHOOL :  
DISTRICT OF THE CITY OF NEW YORK, :  
:   
Employer, : Case No. C-2364  
- and - :  
:   
UNITED FEDERATION OF 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

United Federation of 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 occasional per diem school secretaries who work at least one day during any current school year and who are ineligible for unemployment benefits during school holidays and vacation periods, including the summer months.

Excluded: All other employees.

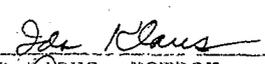
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with

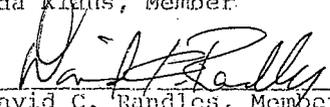
United Federation of Teachers, NYSUT, AFT, AFL-CIO

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 21st day of July, 1982  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

NOTICE OF BOARD ACTION

In re: Petition and Supporting Memorandum of  
Local 1320, District Council 37, AFSCME,  
AFL-CIO to Review Decision No. B-16-82  
of the Board of Collective Bargaining of  
the City of New York

At a meeting of the Public Employment Relations Board held  
on July 22, 1982, the following action was taken with respect to  
the above: jurisdiction refused.

DATED: July 22, 1982  
Albany, New York

By direction of the Board



Ralph Vatalaro  
Executive Director

cc: Office of Collective Bargaining  
Office of Municipal Labor Relations