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State of New York Public Employment Relations Board Decisions from August 16, 1982

New York State Public Employment Relations Board

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED FEDERATION OF TEACHERS,
LOCAL 2, NYSUT, AFT, AFL-CIO,

CASE NO. D-0116

upon the Charge of Violation of
Section 210.1 of the Civil Service Law

BOARD DECISION ON MOTION

This matter now comes to us on a motion made by the United Federation of Teachers, Local 2, NYSUT, AFT, AFL-CIO (Federation) on July 8, 1982. It moves this Board for an order reducing the duration of the dues deduction forfeiture penalty imposed upon it on October 8, 1976 (9 PERB ¶3071). The motion was supplemented on August 4 and 9, 1982 by an affirmation that it "does not assert the right to strike against any government, nor to assist or participate in any such strike, nor to impose an obligation to conduct, assist or participate in any strike" and that it does not adhere to a "no contract, no work" policy.

The dues deduction forfeiture was imposed as a penalty because the Federation engaged in an illegal five-day strike between September 9 and 16, 1975. The 1976 order of the Board provided that the dues deduction privileges of the Federation would be forfeited for an indefinite period of time, but that the Federation was authorized to apply for its reinstatement at any time after the passage of two years from the effective date of the forfeiture upon an affirmation that it no longer asserted the right to strike against any government and an indication that it no longer adhered to a "no contract, no work" policy. Moreover, the Federation was authorized to apply, after the expiration of only 14 months, for a suspension of the balance of the forfeiture upon the same conditions that it would apply 10 months later for the

full restoration of its dues deduction privileges. By reason of court litigation in which the 1976 order of this Board was challenged, the forfeiture ordered by this Board was not effectuated until May 1, 1982.

The basis of the motion is that the loss of dues deduction privileges has impaired the Federation's ability to provide representational services to the employees in the negotiating units that it represents. In support of this proposition the Federation has submitted evidence that it has made substantial efforts to collect the dues by several, reasonably available alternatives.^{1/} Notwithstanding these efforts, and for only the months of May and June, the Federation has suffered a loss of income from dues and agency shop fee payments in the amount of \$870,355, or approximately 30% of its normal income from these sources.^{2/} This loss has forced it to curtail services that it normally renders to unit employees. Most particularly, it refers to the temporary closing of its borough offices^{3/} through which it provides such services as representation in unsatisfactory rating hearings, pension advice, workshops on contract rights, and consultation in connection with grievance and arbitration hearings. The Federation indicates that these offices, the focal point for rendering assistance may have to be closed permanently if its financial problems are not relieved. It also indicates that it has had to lay off employees and since March 1, 1982 left vacancies unfilled; thus further interfering with its ability to service the employees in the negotiating units it represents.

The motion of the Federation is opposed by the Corporation Counsel of the City of New York, the charging party in this proceeding. It argues that there is no authority in law for the reconsideration of a dues checkoff forfeiture and that, in any event, the Federation has not demonstrated such financial hardship as might justify any reduction of the duration of the forfeiture. In this latter connection, it argues that the provision of the Taylor Law

authorizing the forfeiture of dues deduction privileges contemplates that an employee organization which violates the law by striking should suffer some significant impact on its daily operations as a penalty for that strike. Finally, the Corporation Counsel argues that this Board ought not reduce the penalty that it imposed upon the Federation because that penalty was considered by Mr. Justice Hellman as a mitigating factor in determining the penalty that he imposed upon the Federation for contempt of court in Board of Education v. United Federation of Teachers.^{4/}

We find the evidence submitted by the Federation to be persuasive. Although that evidence concerns only two months, a third has now passed. As the two-month loss of income is more than \$870,000, the Federation has already lost more than \$1.3 million in income when the third month is considered. It is more difficult to project the Federation's expenses in trying to collect its dues through reasonably alternative means, because the evidence regarding those costs does not indicate which are one-time only, start-up costs as opposed to recurrent operational costs. It is reasonable, however, to conclude that as of this date the expenses of the Federation and its loss of income aggregate about \$2,000,000.

As the Corporation Counsel states, the Taylor Law, and our Order of 1976, both contemplate that the Federation would suffer some significant impact on its daily operations by reason of its strike. But neither realized the magnitude of the dues checkoff forfeiture so far suffered and as would be projected for another 11 months. Certainly, Mr. Justice Hellman could not have anticipated in 1977 that the Federation would lose so much money by reason of its loss of dues deduction privileges.

Basically, the Taylor Law is designed to punish employee organizations that strike by putting them to the task of collecting their dues without the assistance of dues checkoff privileges. It does not impose a forfeiture of

that dues income. This is readily apparent in the concern expressed in the Law that the financial resources of the employee organization be a factor in determining the extent of the penalty. It is also apparent in the Legislature's rejection of the recommendation of the Taylor Committee that a striking employee organization be denied its right to represent the negotiating unit by withdrawing its certification. The employee organization's continuing status as the certified (or recognized) negotiating representative clearly contemplates a continuing income to enable it to act in that capacity. Indeed, the last factor was emphasized by the Corporation Counsel when it previously wrote:

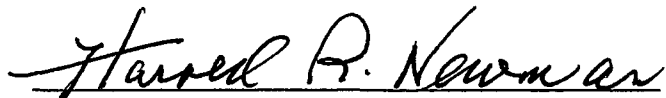
It is important, as I see it, that there be in existence a viable union to carry out the complex labor relations that will exist on an on-going basis between the Board of Education and the Teacher's Union and the teachers.^{5/}

The difficult and most delicate role of this Board is to balance the statutory dictate of punishment for engaging in a strike and the need to preserve the solvency of the negotiating agent so that it may fulfill its statutory purpose of representing all unit employees in the negotiation and administration of collective bargaining agreements.

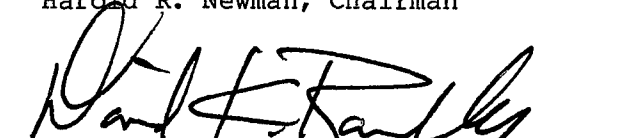
This is not the first time that the Federation has sought relief from our order of dues forfeiture.^{6/} Previously its assertion that the dues forfeiture would threaten its solvency was denied as being "based upon conjecture". Now, however, its financial straits are real. The Federation has demonstrated that, despite substantial vigorous and costly efforts, it has been unable to collect necessary income; it has shown that representational services have already been impaired and that the continuation of the penalty will lead to the elimination or diminution of other necessary and material services to the public employees. This justifies reconsideration and modification of the forfeiture.^{7/}

NOW, THEREFORE, WE MODIFY our order to the extent that the forfeiture of the Federation's dues deduction privilege is suspended; that such suspension is subject to revocation in the event of a strike or strike threat. The Federation may apply to this Board, on notice to the Corporation Counsel, in April 1984 for full restoration of its dues deduction privileges.

DATED: Albany, New York
August 16, 1982



Harold R. Newman, Chairman



David C. Randles, Member

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- 1/ These include direct membership payment of a year's dues with a 10% discount; automatic checking account deduction authorization cards; and Teachers' Retirement System loans with a 10% discount. The cost of developing these procedures and applying them through June, 1982 has exceeded \$500,000.
 - 2/ Our order of October 8, 1976 did not refer to agency shop fee payments. The reason for this is that the Taylor Law did not authorize agency shop fee payments until September 2, 1977. In 1977, the Legislature authorized negotiation of agency shop fee deduction privileges on behalf of employee organizations that had not forfeited dues deduction privileges. [Civil Service Law, §208.3(b)]. The Federation has negotiated for an agency shop fee and receives approximately \$77,000 a month from this source.
 - 3/ These offices usually close for the summer recess, however this shut down period has been extended.
 - 4/ 10 PERB ¶7520 (1977).
 - 5/ 9 PERB ¶3071, 3127 (1976).
 - 6/ 14 PERB ¶3073 (1981).
 - 7/ We are not persuaded by the Corporation Counsel's argument that we lack authority to modify our own order.