8-18-1982

State of New York Public Employment Relations Board Decisions from August 18, 1982

New York State Public Employment Relations Board

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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

COUNTY OF TOMPKINS,

Respondent,

CASE NO. U-5676

-and-

TOMPKINS COUNTY UNIT, LOCAL 855, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Charging Party.

ROBERT I. WILLIAMSON, ESQ., County Attorney (GEORGE R. PFANN, JR., ESQ., of Counsel), for Respondent

ROEMER & FEATHERSTONHAUGH, ESQS., (MICHAEL J. SMITH, ESQ., of Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of both parties to a hearing officer's decision dismissing the improper practice charge filed by the Tompkins County Unit, Local 855, Civil Service Employees Association, Inc. (CSEA) alleging that the County of Tompkins (County) had violated §209-a.1(d) of the Taylor Law when it unilaterally allocated a newly created position to a salary grade and refused to negotiate the issue of grade allocation.

FACTS

In June 1981, the County advised CSEA that it had created a new unit position and allocated it to a salary grade reflected in the parties' 1979-1981 contract. Shortly thereafter, the County advised CSEA that it was under no obligation to negotiate such allocations to salary grades.

At a pre-hearing conference, before the initially assigned hearing officer, it was agreed that the sole issue to be considered would be the negotiability of allocation decisions. The parties were afforded an opportunity to submit briefs. In its submission, the County also included a statement raising the issue of contract waiver. CSEA protested the submission and demanded a hearing in the event that the hearing officer intended to consider the issue of contract waiver. The initially assigned hearing officer wrote to the parties indicating that the issue of contract waiver was not included in the submission agreed to by the parties at the pre-hearing conference and that he would not consider it. Subsequently, another hearing officer was substituted and he, without a hearing, dismissed the improper practice charge on the basis of contract waiver.

CSEA filed exceptions alleging that the hearing officer committed error by denying it due process and that in any event the hearing officer erroneously interpreted the provisions of the contract used as the basis for finding that CSEA had waived its right to negotiate allocation decisions. The County, citing Evans v. Newman,[1/] filed exceptions claiming that, as a matter of law, allocation decisions are not negotiable. Both parties discussed the Evans case in their briefs.

DISCUSSION

We affirm the results reached by the hearing officer but do so for different reasons.

In Evans, the Appellate Division, whose opinion was adopted by the affirming Court of Appeals, stated:

> Allocation of positions to salary grade is primarily related to a "mission" of an employer and not to terms and conditions of employment. PERB was in error when it determined otherwise. (at p. 246)

As a matter of law, therefore, allocation decisions are part of the "mission" of government and thus not a mandatory subject of negotiation.[2/]

The hearing officer found the holding of the Evans Court inapposite on the premise that it dealt with State employees whereas this proceeding concerns employees of local governments. We believe that the quoted holding was intended as a general statement of the law whose applicability was not restricted to the parties to that case. We have reconsidered our earlier decisions affecting local employees, and we conclude as to them, as the Court did with respect to State employees, that allocation and reallocation are an essential aspect of the level and quality of service to be provided by a public employer. A public employer should not be compelled to negotiate over such decisions and we therefore conclude that allocations to salary grade are not mandatory subjects of negotiation. Accordingly, we conclude that the exceptions filed by the County have merit, and need not address the bases of the exceptions filed by CSEA, including the matter of waiver.

NOW, THEREFORE, WE AFFIRM the decision of the hearing officer finding no violation of Taylor Law §209-a.1(d), and

WE ORDER that the exceptions filed by CSEA be, and the same are hereby, DISMISSED.

DATED: Albany, New York
August 18, 1982

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

1/ 100 Misc 2d 207 (1979), affd 71 AD2d 240 (1979), affd 49 NY2d 904 (1980).

2/ New Rochelle, 4 PERB ¶3060 (1971); West Irondequoit, 4 PERB ¶3070 (1971); 42 AD2d 808 (1973), 35 NY2d 46 (1974).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

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

-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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BOARD DECISION ON MOTION

This matter comes to us on a motion of the Board of Education of the City School District of the City of New York (District) to reconsider our decision of July 22, 1982. In that decision, we denied a motion of the District for permission to file exceptions to an interim decision of the Assistant Director of Public Employment Practices and Representation.

In its motion, the District reiterates some of the arguments presented to us on the original motion but does not address the reasons given by us for denying the motion.

Having reviewed the record, we determine that the motion is without merit.

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

DATED: Albany, New York
August 18, 1982

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member