



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Board Decisions - NYS PERB

New York State Public Employment Relations
Board (PERB)

10-28-1982

State of New York Public Employment Relations Board Decisions from October 28, 1982

New York State Public Employment Relations Board

Follow this and additional works at: <https://digitalcommons.ilr.cornell.edu/perbdecisions>

Thank you for downloading an article from DigitalCommons@ILR.

Support this valuable resource today!

This Article is brought to you for free and open access by the New York State Public Employment Relations Board (PERB) at DigitalCommons@ILR. It has been accepted for inclusion in Board Decisions - NYS PERB by an authorized administrator of DigitalCommons@ILR. For more information, please contact catherwood-dig@cornell.edu.

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact web-accessibility@cornell.edu for assistance.

State of New York Public Employment Relations Board Decisions from October 28, 1982

Keywords

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

Comments

This document is part of a digital collection provided by the Martin P. Catherwood Library, ILR School, Cornell University. The information provided is for noncommercial educational use only.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-10/28/82

In the Matter of

NORTH SYRACUSE CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2367

NORTH SYRACUSE EDUCATION ASSOCIATION,
NYSUT, AFT, AFL-CIO,

Petitioner.

BOND, SCHOENECK & KING, ESQS. (WILLIAM L.
BERGAN, ESQ. and JOHN GAAL, ESQ., of
Counsel), for Employer

MARY K. KASSMAN, for Petitioner

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of both the North Syracuse Education Association, NYSUT, AFT, AFL-CIO, the petitioner herein, and the North Syracuse Central School District, the employer herein, to a decision of the Director of Public Employment Practices and Representation (Director) defining a unit of those per diem substitutes, and only those per diem substitutes, who have received from the employer the reasonable assurance of continuing employment referred to in §201.7(d) of the Taylor Law. Both the petitioner and the employer question the appropriateness of the unit. Both also complain that they were denied a hearing and thus deprived of an opportunity to present evidence. The Association asserts that it could have shown that some per diem substitutes who did not receive an assurance of continuing employment should have been included in the unit, while the

7799

District asserts that it could have shown that some per diem substitutes who did receive that assurance should not have been included in the unit.^{1/}

In its exceptions, the employer further argues that the Director erred in not disqualifying the petitioner from representing per diem substitutes. It advances two reasons in support of this argument. One is that the petitioner represents the regular teachers of the employer and that its certification as a representative of per diem substitutes would therefore prejudice the employer in the event of a strike by regular teachers. The second is that the petitioner engaged in a strike of regular teachers in November 1976 and has thereby become ineligible for any new certifications.

We first address the allegation that a hearing might have produced evidence establishing that some per diem substitutes who did not receive a reasonable assurance of continuing employment should have been included in the unit. We find that the evidence would not be material.

Prior to July 27, 1981, "per diem" substitutes were not generally deemed to be "employees" eligible for Taylor Law representation rights.^{2/} The Taylor Law representation rights could be established only by proof of unusual circumstances involving a more than casual relationship between the per diem substitutes and the school districts for which they worked.^{3/}

1/ On April 13, 1982, we denied motions of both parties for permission to appeal the interlocutory ruling of the Director denying their requests for a hearing saying, "We cannot conclude that there is a sufficient likelihood that a hearing will be required." (15 PERB ¶3034 [1982])

2/ In Syracuse CSD (King), 6 PERB ¶3083 (1973); East Ramapo CSD, 6 PERB ¶4033 (1973); Board of Education of the City School District of the City of New York, 10 PERB ¶4043 (1977), this Board and the Director held, in several decisions, that the employment relationship of per diem substitutes to the school districts for which they worked was too casual to carry the right of representation.

3/ Board of Education of the City School District of the City of Buffalo, 13 PERB ¶3073 (1980).

The status of per diem substitutes who received a reasonable assurance of continuing employment changed on July 27, 1981, when the Taylor Law was amended^{4/} to provide that per diem substitute teachers whose employers give them a reasonable assurance of continuing employment are entitled to representation rights under the Taylor Law.^{5/} However, the status of the per diem substitutes who did not receive a reasonable assurance of continuing employment was not changed. No circumstances were alleged in the instant case which might indicate that the per diem substitutes of the District who did not receive a reasonable assurance of continuing employment had other than a casual relationship to the District. Thus, evidence on this point would not have been material.

We now address the allegation that a hearing might have produced evidence establishing that not all per diem substitutes who received a reasonable assurance of continuing employment should have been placed in one unit. Under the amendment, all per diem substitutes who receive a reasonable assurance of continuing employment are entitled to representation rights. Thus, if the Director had excluded some of them from the negotiating unit, he would have been required to place them in another unit. Such fractionalized units of per diem substitutes on the basis sought by the District would not have been viable for collective negotiations. Moreover, if limited to per diem substitutes who worked infrequently or had not even worked at all after receiving the reasonable assurance referred to in the statute, the employees in such a unit would not be able to exercise

^{4/} Chapter 814 of the Laws of 1981.

^{5/} This amendment followed an amendment of §590.10 of the Labor Law, effective January 1, 1978, which disqualified for unemployment insurance benefits those teachers who received from their employer a reasonable assurance of continuing employment after a vacation period.

effectively the negotiating rights specifically accorded to them by the Legislature. Thus, evidence seeking to support two separate units would not have been material.

The employer's contention that some per diem substitutes who received a reasonable assurance of continuing employment should not be in the same negotiating unit as other per diem substitutes who received the same assurance is not affected by the assurance of continuing employment given to some per diem substitutes by more than one school district. The Taylor Law amendment clearly provides that all substitute teachers who receive reasonable assurance of continuing employment from a school district are deemed employees of that school district and the legislative history of the amendment indicates that the authors of the legislation were aware that some of the substitute teachers received such an assurance from more than one school district.^{6/} The Director therefore correctly determined that a hearing could not have produced evidence requiring the fragmentation of the unit of per diem substitute teachers. Accordingly, we affirm his unit determination.^{7/}

Turning to the other issues raised by the employer's exceptions, we reject the argument that, by reason of the possibility of a strike, petitioner's representation of regular teachers disqualifies it from representing per diem substitutes. The issue here is not the unit determination, but the qualification of the Association to represent per

^{6/} The legislation was authored by the Temporary Subcommittee on Per Diem Substitute Teachers which had been created by Chapter 589 of the Laws of 1978. The minutes and correspondence of the subcommittee indicate that it saw no difficulty in the multiple representation of per diem substitute teachers who hold multiple substitute teaching positions.

^{7/} See Bethpage Union Free School District, 15 PERB ¶3094 (1982).

diem substitutes. Sections 202 and 207.2 of the Taylor Law give to public employees the right to be represented by the employee organization of their choice. The statute does not limit this right where the organization represents more than one distinct group, one of which might strike in support of the other.^{8/}

Finally, we reject the employer's argument that petitioner must be disqualified for certification by reason of its strike in 1976. The statute provides no basis for such sanction. Indeed, the legislative history of the statute is contrary to the employer's position.^{9/}

Section 207.3 of the Taylor Law does provide that as a condition for becoming the recognized or certified representative of a unit of public employees, an employee organization must affirm "that it does not assert the right to strike against any government, to assist or participate in such strike, or to impose an obligation to conduct, assist or participate in such a strike." That affirmation has been made here and there is no reason to

^{8/} In this, the Taylor Law must be contrasted with §9(b) of the National Labor Relations Act and New Jersey statute 34:13A-5.3, both of which reflect a statutory policy that unions which represent employees performing a particular type of work (guards under the NLRA, police under the New Jersey statute) be disqualified from representing other employees performing other types of work.

^{9/} The 1966 Taylor Law bill which passed in the Senate but not the Assembly included as a penalty for striking,

revocation of the recognition or certification of such organization and forfeiture of the rights accompanying such certification or recognition, either indefinitely or for a specified period of time as the Board shall determine (CSL §210.3(f) as proposed by S.I. 4784, S.P. 5689 of 1966).

doubt its good faith.^{10/} Section 210.3(f) of the Taylor Law itself indicates that a reasonable test of an employee organization's good faith acceptance of the strike prohibition is whether, after a strike, it has successfully negotiated a contract covering the employees in the unit affected by the violation without any further violation of the strike prohibition. In the present case, petitioner has negotiated three contracts with the employer since its 1976 strike without any further violation of §210.1 of the Taylor Law.

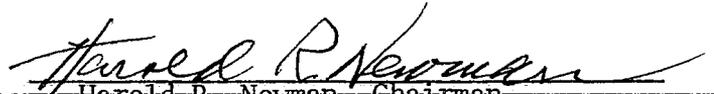
NOW, THEREFORE, WE ORDER that the exceptions herein be, and they hereby are, dismissed, and we refer this matter to the Director to conduct an election by mail ballot among per diem substitutes who received a reasonable assurance of continuing employment for the 1982-83 school year as referenced in §201.7(d) of the Taylor Law unless the petitioner submits to the Director, within ten days from the date of receipt of this decision, evidence to satisfy the requirements of §201.9(g)(1) of the Rules of this Board for certification without an election.

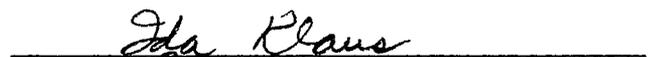
WE FURTHER ORDER the employer to submit to the Director and the petitioner, within ten days from the date of receipt of this decision, an alphabetized list of all per diem substitutes who have received a reasonable

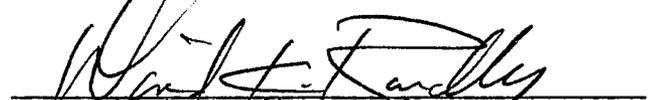
^{10/} Cf. State of New York (SUNY), 12 PERB ¶3092 (1979).

assurance of continuing employment for the 1982-83
school year as referenced in §201.7(d) of the Taylor
Law.

DATED: October 28, 1982
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-10/28/82

In the Matter of

HORSEHEADS TEACHERS ASSOCIATION and
NEW YORK STATE UNITED TEACHERS,

CASE NO. D-0227

Upon the charge of a violation of
Section 210.1 of the Civil Service Law.

BERNARD F. ASHE, ESQ. (ROCCO A. SOLIMANDO, ESQ. and
GUNTER DULLY, ESQ., of Counsel), for Respondent

SAYLES, EVANS, BRAYTON, PALMER & TIFFT, ESQS., for
Charging Party

BOARD DECISION AND ORDER

The charge herein was filed by the chief legal officer of the Horseheads Central School District (District). It alleges that the Horseheads Teachers Association (Association) and NYSUT engaged in a strike in that they directed guidance counselors to refrain from work and condoned the ensuing work stoppage of the guidance counselors. The hearing officer determined NYSUT was not implicated in the strike. The determination with respect to NYSUT is not being questioned by the District and it is supported by the record. The hearing officer further determined that the Association condoned the strike, but did not call it. The Association has filed exceptions to this determination.

The Association represents a unit of about 340 employees of the District. Among these are five high school guidance counselors. For at least three years, the high school guidance counselors had participated in parent orientation meetings that were held on evenings shortly after the opening of the school year.

7806

As of the opening of school in September 1981, the District and the Association had not yet reached an agreement to succeed one that had expired in June 1981. Dissatisfied with the progress of the negotiations, the guidance counselors questioned whether attendance at the orientation sessions was a part of their job description and they indicated to Bossong, the assistant principal of the high school, that they would consult with Rutenkroger, the Association's president, regarding their obligation to attend the sessions. Rutenkroger told Andrews, one of the high school guidance counselors, that participation in the parent orientation sessions was not required by the counselors' job descriptions. Andrews notified Bossong of the information that he received. Thereafter Bossong wrote to the guidance counselors directing each of them to attend one specified session.

On September 22, Zaidel attended the orientation session to which she was assigned, but Millard did not. Millard also absented himself from school that day. On September 24, Fudge and Andrews both stayed away from the orientation session to which they were assigned and absented themselves from school. On September 29, Franco stayed away from the orientation session to which he was assigned and absented himself from school. It is clear from the evidence that the absences of Millard, Fudge, Andrews and Franco constituted a strike. The only question is whether it can be found from the evidence that the Association bears any responsibility for that strike.^{1/} We conclude that the evidence supports such a finding.

^{1/}The Association argues that the hearing officer should have dismissed the charge because it was not brought "forthwith", having been filed 49 days after the strike. We consider the charge to have been brought with reasonable expedition. In this we contrast Local 2055, 15 PERB ¶3070 (1982) in which we held that a charge brought more than 18 months after the strike was not timely.

Thus, while on several occasions between September 4 and 18 Rutenkroger urged the counselors not to be "insubordinate", this advice, which may or may not have referred to the contemplated strike, did not continue after September 18. Moreover, Rutenkroger did not make any effort to communicate with the counselors once the strike had begun even though he knew, by September 14, that the counselors were relying upon his incorrect advice to Andrews that their attendance at the parent orientation sessions was not required by the counselors' job descriptions.

We affirm the hearing officer's conclusions that Rutenkroger condoned the strike and that his action is attributable to the Association.

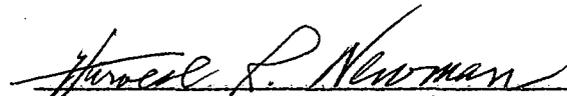
We turn next to the extent of the penalty to be imposed upon the striking employee organization (CSL §210.3[f][ii]). We affirm the determination of the hearing officer on this record that the impact of the strike was de minimis. We must consider also the degree to which the strike reflects a willful defiance of the Taylor Law prohibition of strikes (CSL §210.3[f][i]). We find that the absence of any reference in the guidance counselors' duty statements to attendance at after-school parent-teacher orientation meetings supports a conclusion that the guidance counselors did not believe that their decision not to attend the meetings would constitute a strike. Their subsequent action therefore reflected only a slight measure of willful defiance.

The circumstances before us are therefore substantially the same as in Webutuck Teachers Association, 13 PERB ¶3041 (1980). In that case, we decided that the right of the striking association to the deduction of membership dues and to agency shop fee payments should not be suspended. We note here, however, as we did in Webutuck, that the impact of our decision

upon the Association is not insignificant. Our determination that it has struck in violation of the Taylor Law will be given significant consideration in the event that it strikes a second time. It is our practice to impose a more severe penalty upon employee organizations which strike a second time than we do for a first offense.

NOW, THEREFORE, WE DETERMINE that the Horseheads Teachers Association has violated §210.1 of the Taylor Law, that the impact of the strike upon the health, safety and welfare of the community was de minimis, and that the violation reflects only a slight willful defiance of the Law. WE ORDER that no forfeiture of dues checkoff or agency shop fee payments be imposed.

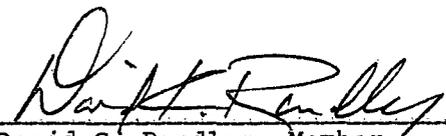
DATED: October 28, 1982
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2C-10/28/82
:
WYANDANCH TEACHERS ASSOCIATION : CASE NO. D-0187
:
Upon the Charge of Violation of :
Section 210.1 of the Civil Service Law.:

Robert D. Clearfield, Esq., for Respondent

Martin L. Barr, Esq. (Richard A. Curreri, Esq.,
of Counsel), for Charging Party

Packman, Oshrin and Block, Esqs. (Alan D. Oshrin, Esq.,
of Counsel), for Employer

BOARD DECISION AND ORDER

On March 6, 1980, Counsel to the Public Employment Relations Board charged the Wyandanch Teachers Association (Association) with violating §210.1 of the Taylor Law by engaging in a 41-day strike between September 17 and November 16, 1979, against the Wyandanch Union Free School District (District).

At the hearing which was held on July 1, 1980, January 27, 1981 and February 26, 1981, the Association conceded that it engaged in the 41-day strike as charged, but, as an affirmative defense, it alleged that its responsibility for the strike was diminished by acts of extreme provocation attributable to the District. The hearing officer concluded that the affirmative defense was not supported by the evidence.^{1/} The hearing

^{1/} We determined at 15 PERB ¶3010 (1982) that the hearing officer did not give the Association sufficient opportunity to submit all its evidence in support of its allegation that its responsibility for the strike was diminished by acts of extreme provocation attributable to the District and we remanded the matter to her to take further evidence. After a second hearing, the hearing officer came to the same conclusion that she had reached after the first, that the evidence did not establish the allegation.

officer also concluded that the strike had a serious impact on the welfare of the community. In support of this conclusion, she found that all but 12 or 13 of the 146 teachers of the District participated in the strike which prevented the District from conducting its usual education program. She also found that picketing teachers prevented vendors from delivering food and supplies to school buildings and, in the presence of students, they verbally abused substitute teachers who crossed the picket line.

No exceptions were filed to any of the findings of the hearing officer but the Association excepted to her determination that the Association's responsibility for the strike was not diminished by acts of extreme provocation attributable to the District. As to this point, the Association argues that the District engaged in a pattern of conduct during negotiations which establishes such extreme provocation. According to the Association, the alleged circumstances which most clearly evidence such a pattern consist of the District's failure to give its negotiator sufficient authority to reach an agreement; the District's unwillingness to negotiate economic issues unless the Association would first capitulate to the District's position on the noneconomic issues; the District's attempt to intimidate the Association into withdrawing its chief negotiator; and the District's unilateral increase of the work year. The Association also contends that the District evidenced its intent to provoke a strike by making preparations for one before any strike was threatened.

The hearing officer dealt with each of the Association's allegations. She found that the District's negotiator had been given sufficient authority to enter into an agreement within the parameters acceptable to the District. She also found that the District did not insist upon negotiating noneconomic issues before negotiating the Association's salary proposal. As

for the allegation that the District tried to intimidate the Association into removing its chief negotiator, the hearing officer found that, while there was personal antipathy between the chief negotiators, the District did not try to undermine the status of the Association's chief negotiator. The hearing officer found no basis in the record for concluding that the District's change in the school calendar increased the number of teacher work days. Finally, the hearing officer was not persuaded by the Association's argument that the District's strike precautions evidenced its intention to provoke a strike.

Having reviewed the record, we affirm these findings of fact of the hearing officer. Accordingly, we agree that the evidence does not establish a pattern of extreme provocation by the District.

It remains for us to determine the appropriate penalty to be assessed against the Association under the circumstances. We note that this was the first strike by the Association but that it was an unusually long one. Lasting 41 days, it is the second longest strike in the history of the Taylor Law. Throughout its duration, the strike had a serious impact upon the welfare of the community in that it curtailed the normal educational program of the District. However, there is no evidence that it had any impact upon the public health or the safety of the community.

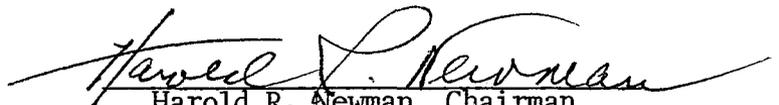
Until this time the longest dues checkoff forfeiture that we have imposed for a first strike involving teachers has been 15 months. That penalty was imposed upon the Levittown United Teachers for a strike of 34 days.^{2/} We determine that a longer penalty is appropriate here and that the Association should lose its dues deduction and agency shop fee privileges for 18 months.

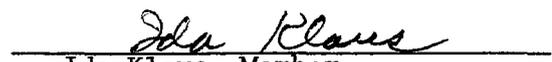
^{2/} Levittown United Teachers, 12 PERB ¶3043 (1979). There was no hearing in the Levittown case. The Levittown United Teachers withdrew its answer to the charge and agreed with the charging party to jointly recommend a penalty of a dues deduction forfeiture of 15 months.

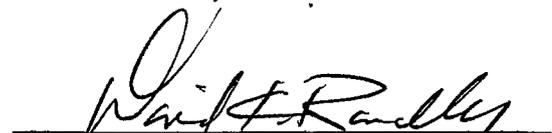
NOW, THEREFORE, WE ORDER that the dues deduction and agency shop fee privileges, if any, of the Wyandanch Teachers Association be forfeited commencing on the first practical date and continuing thereafter for a period of 18 months. Thereafter no dues or agency shop fees shall be deducted on its behalf until it affirms that it no longer asserts the right to strike against any government, as required by the provisions of CSL §210.3(g).

If it becomes necessary to utilize the dues and agency shop fee deduction process for the purpose of paying the whole or any part of a fine imposed by order of a Court as a penalty in a contempt action arising out of the strike herein, the suspension of the dues and agency shop fee deduction privileges ordered hereby may be interrupted or postponed for such period as shall be sufficient to comply with such order of the Court, whereupon the suspension ordered hereby shall be resumed or initiated as the case may be.

Dated: October 28, 1982
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-10/28/82

In the Matter of

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

Respondent,

CASE NO. U-5758

-and-

DONALD J. BARNETT,

Charging Party.

JAMES R. SANDNER, ESQ. (JANIS LEVART BARQUIST, ESQ.,
of Counsel), for Respondent

DONALD J. BARNETT, pro se, for Charging Party

INTERIM BOARD DECISION AND ORDER

The charge herein was filed by Donald J. Barnett, a member of the negotiating unit represented by the United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO (UFT), who pays an agency fee to UFT. The charge alleges that UFT coerces Barnett in the exercise of his right to refrain from joining that employee organization by giving to its members, but not to agency shop fee payers, free subscriptions to three union newspapers. Without taking any evidence, the hearing officer dismissed the charge saying:

Although the printing and distribution of the union literature has a cost factor, . . . [i]t does not represent the type of benefit reasonably likely to influence a membership decision and, therefore, the restricted distribution does not itself violate the Act.

781A

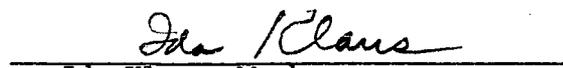
Filing exceptions to the hearing officer's report and recommendations, Barnett argues that the newspapers contain matters of substantial value to unit employees who receive them. He also argues that by using its general funds, part of which derives from agency shop fee payments, to pay for the printing and distribution of the newspapers, UFT is compelling agency shop fee payers to subsidize UFT members.

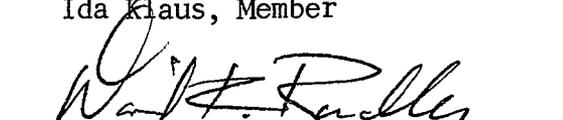
We can neither affirm nor refute the hearing officer's conclusion that withholding of union newspapers from agency shop fee payers may be coercive without having a representative sampling of the newspapers before us.^{1/} Neither can we determine whether the financing of such printing and distribution of the newspapers out of the general funds of UFT, part of which comes from agency shop fee contributions, is coercive without information regarding the costs involved.

NOW, THEREFORE, WE REMAND this matter to the hearing officer to take appropriate evidence in accordance with this decision, and to issue a decision based upon such evidence.

DATED: October 28, 1982
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

^{1/} The charging party submitted one copy of each of the three newspapers to the hearing officer, but the submission was without notice to UFT and cannot be considered by us as part of the record.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2E-10/28/82

In the Matter of

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

Respondent,

CASE NO. U-6140

-and-

BERNARD SCHWARTZ,

Charging Party.

BERNARD SCHWARTZ, pro se

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Bernard Schwartz to a decision of the Director of Public Employment Practices and Representation dismissing his charge. The charge alleges that the United Federation of Teachers, Local 2, AFT, AFL-CIO (UFT) acted improperly in refusing to provide legal services to Schwartz who was challenging his dismissal from employment.

Finding that the charge did not allege facts that might constitute a violation of the Taylor Law, the hearing officer assigned to the case wrote to Schwartz on three occasions for additional information.^{1/} Schwartz

^{1/} The improper practice charge form calls for the specification "in detail [of] the particular alleged violation, with a complete statement of the facts supporting the charge including names, dates, times, places, etc." The hearing officer's three letters to Schwartz told him that this requirement had not been met. In his second letter, the hearing officer invited Schwartz to telephone him if he had any questions about what details were required for the filing of a valid charge but Schwartz did not avail himself of this opportunity.

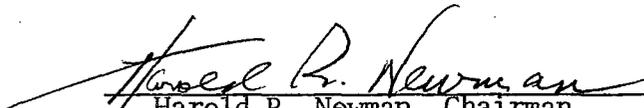
7816

replied each time but none of his responses contained sufficient information to constitute an allegation of a Taylor Law violation by UFT. The additional information merely indicates that Schwartz complained about his dismissal by the "Board of Education" to a representative of UFT, who informed him that UFT "supports" the action of the Board of Education.

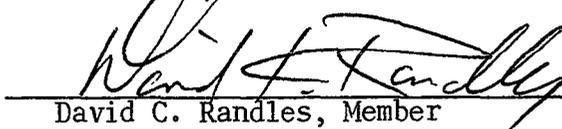
We are left to surmise that the employer is the City School District of the City of New York and that Schwartz was in a negotiating unit represented by UFT. Doing so, however, we find no alleged facts suggesting that UFT's decision to support the Board of Education was improperly motivated, grossly negligent or irresponsible.^{2/}

NOW, THEREFORE, WE AFFIRM the decision of the Director of Public Employment Practices and Representation, and WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: October 28, 1982
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

^{2/}See Brighton Transportation Association (Raz), 10 PERB ¶13090 (1977), in which we held that a union commits an improper practice by refusing to represent a unit employee only if its decision to refuse such representation is "improperly motivated or so negligent or irresponsible as to constitute a breach of the duty of fair representation."

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2F-10/28/82

In the Matter of

UNITED FEDERATION OF TEACHERS, LOCAL 2,

Respondent,

CASE NO. U-6057

-and-

FRED GREENBERG,

Charging Party.

FOARD & ROSOFF, ESQS. (DAVID M. ROSOFF, ESQ.,
of Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Fred Greenberg to a decision of the Director of Public Employment Practices and Representation (Director) dismissing his charge that the United Federation of Teachers, Local 2 (UFT) violated its duty of fair representation to him. The charge alleges that UFT discriminated against Greenberg by assigning Martin Gross to represent him at hearings of an unspecified nature despite his complaint that Gross had been unable or unwilling to represent him adequately in the past.^{1/}

The hearing officer assigned to the case notified Greenberg on April 28, 1982, that his charge was deficient "in that the facts as alleged do not appear to set forth a violation of the Public Employees' Fair Employment Act." Greenberg asked for an opportunity to allege additional facts and was given two extensions of time during which to do so. On June 21, 1982, his attorney sent a photocopy of three documents to the hearing

^{1/}The hearing officer also dismissed other allegations of the charge but the exceptions do not deal with them, and they are not before us.

officer. None of these documents dealt with events that occurred before the charge was filed.

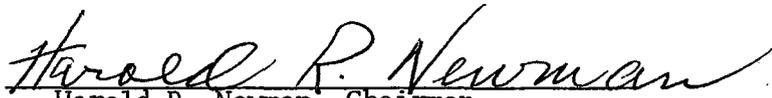
The Director found that the allegations of fact did not establish a prima facie case and he dismissed the charge.

Greenberg's exceptions refer to no allegations in the record. Having reviewed the record, we find no evidence to support a conclusion that UFT acted in an unlawful manner with respect to its duty toward him.

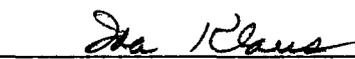
Accordingly, we find no evidence to support a conclusion that the Director was in error.

NOW, THEREFORE, WE AFFIRM the decision of the Director, and
WE ORDER that the charge herein be, and it hereby is,
dismissed.

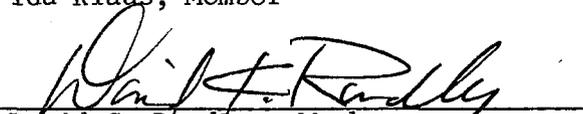
DATED: October 28, 1982
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2G-10/28/82

In the Matter of

PROFESSIONAL STAFF CONGRESS/CUNY,

Respondent,

CASE NO. U-5655

-and-

MELVIN M. BELSKY and DAVID H. RAAB,

Charging Parties.

JAMES R. SANDNER, ESQ. (J. CHRISTOPHER MEAGHER, ESQ.,
of Counsel), for Respondent

MELVIN M. BELSKY, pro se

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Melvin M. Belsky to a hearing officer's determination that three specifications of a charge brought by himself and David H. Raab were not timely.^{1/} Belsky acknowledges that the actions of Professional Staff Congress/CUNY (PSC) complained about in the three specifications of the charge occurred more than four months prior to the filing of the charge, but he argues that our rules do not impose a four-month time limit on charges. Alternatively, he argues that the Taylor Law does not impose such a time limit and that

^{1/}The hearing officer determined that other specifications of the charge were timely and he considered their merits, dismissing one and sustaining two others. No exceptions were filed to the hearing officer's disposition of the specifications of the charge which he considered on their merits and that disposition is not before us.

7820

any attempt of this Board to do so in its rules is invalid. Finally, Belsky argues that if there is a proper four-month time limit, it was waived when the Director of Public Employment Practices and Representation assigned the case to a hearing officer.

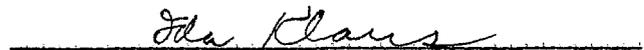
We find no merit in any of Belsky's arguments. The Taylor Law does not specify any procedures for the prevention or remediation of improper practices but requires this Board to establish such procedures (§205.5[d] of the Taylor Law). Acting pursuant to that assignment, this Board promulgated rules establishing a four-month time limit for the bringing of a charge (Rule 204.1[a][1])^{2/} and authorizing a respondent to raise the question of the timeliness of the charge as an affirmative defense (Rule 204.3[c][2]). PSC did so here, and the hearing officer found merit in the defense.

NOW, THEREFORE, WE ORDER that the exceptions herein be, and they hereby are, dismissed.

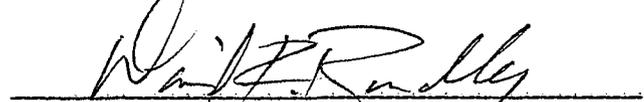
DATED: October 28, 1982
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

^{2/}Compare County of Nassau v. PERB, no official report (Sup. Ct. Nassau Co. 1981), 14 PERB ¶7023, in which the Supreme Court affirmed a decision of this Board dismissing exceptions to a hearing officer's decision because the exceptions were not filed within the time limits specified in our rules of procedure.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2H-.0/28/82

In the Matter of

ST. LAWRENCE-LEWIS COUNTY BOCES
TEACHERS ASSOCIATION,

Respondent,

CASE NO. U-5833

-and-

DEBORAH L. BAKER,

Charging Party.

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

DEBORAH L. BAKER, pro se

BOARD DECISION AND ORDER

The charge herein was filed by Deborah L. Baker, a former employee of St. Lawrence-Lewis County BOCES (BOCES) who, while so employed for the 1980-81 school year, paid an agency shop fee to the St. Lawrence-Lewis County BOCES Teachers Association (Association). The charge alleges that the Association violated §209-a.2 of the Taylor Law in that it did not have a proper agency shop fee refund procedure and that it did not properly implement the procedure that it had. The hearing officer found merit in some specifications of her charge, but not in others, and the matter now comes to us on the exceptions of both Baker and the Association.

Acting in accordance with the Association's procedures, Baker made a request in September 1980 for a refund of agency shop fees to be paid during the school year then commencing. Those procedures provide no appellate steps for challenging the amount of the refund. Baker ceased to be an

7822

employee of BOCES in September 1981, after which she was not represented by the Association.

On October 15, 1981, Baker received a check from the Association in the amount of \$10 with a memorandum that explained that the check reflected only the Association's own refundable expenses and that an additional refund might be received from the Association's state and national affiliates. The refund from the Association was not accompanied by any financial explanation of how it was calculated.

Baker filed the charge on December 24, 1981. In it she complained both about the lack of financial information and the failure of the Association to refund a proportionate share of the monies that it sent to its affiliates. Four weeks thereafter, she received an agency shop refund from the affiliates, but it, too, was not accompanied by any financial information. A week later she received a letter from the Association telling her that financial information explaining the amounts of the refunds would be sent to her as soon as it was available. That information was sent a month later.

Baker never amended her charge to complain that no requisite financial information accompanied the refund from the Association's affiliates.

The hearing officer determined that the Association's failure to furnish financial information to Baker along with the \$10 check on October 15, 1981, violated §209-a.2(a) of the Taylor Law. She rejected the allegation that the refund of the proportionate share of monies sent to the affiliates was so late as to constitute a violation. She also ruled that inasmuch as Baker never charged the Association with failing to provide financial information explaining the later refund, that inaction was not before her, and she did not find it to be a violation of the statute.

In her exceptions, Baker argues that her charge was sufficient to encompass the entire amount of her agency shop fee payments. She asserts that since the Association is responsible for the entire refund even though part of it involves monies which it sent to its affiliates, her complaint that the refund procedure was inadequate is sufficient to address all aspects of the inadequacies.

In its exceptions, the Association argues that its treatment of Baker did not violate the statute because, at the time of the refund, Baker was no longer a unit employee. Furthermore, whatever other agency shop refund obligations to Baker it may have had were satisfied in that it had made an appropriate refund and given her relevant financial data. A second basis for the Association's exceptions is that this Board's previously stated rationale for requiring financial information is irrelevant because the refund procedure contains no internal appellate steps.

We find, as did the hearing officer, that the refund of a proportionate share of the monies sent by the Association to its affiliates was not late. Moreover, it was not improper for the Association to refund the proportionate share of the agency fee monies it retained without awaiting the refund of the share it sent to the affiliates. The validity of each of the two refunds must be judged separately and the allegation in the charge that the Association's refund was not accompanied by financial information cannot be read to anticipate a similar inadequacy with respect to the later refund.

Accordingly, we affirm the decision of the hearing officer that the remedy for the Association's violation should be limited to that part of the agency shop fee which the Association did not forward to its affiliates.

The Association's contention that its obligations to Baker under §209-a.2 terminated with her loss of employment in September 1981 is rejected. We affirm the reasoning of the hearing officer that:

Baker's right to pursue her 1980-81 refund request derives from her payment of agency shop fee for the year 1980-81. The fact that she later left public employment does not divest her of her rights under the Act to a legally adequate agency shop fee refund determination regarding deductions made during her public employment.

Moreover, her right under the Taylor Law to receive an explanation of the amount of the refund at the time it is made was established when she paid the agency fee and requested the refund. Both of these events occurred when she was a unit employee. Her fundamental right to receive the explanation remained operative and was not extinguished simply because she left BOCES' employment. Thus, even though Baker was no longer a unit employee at the time the Association made the refund, the Association was required to fulfill the obligation it assumed at the time it accepted the agency shop fee and the employee requested the refund.

We also note that the Association's failure to provide Baker with an explanation of the amount of her agency shop fee refund has a coercive effect upon the right of current unit employees to exercise their statutory right to refrain from joining the Association. They may reasonably fear that they too will receive no financial information if their employment is terminated after paying an agency shop fee but before receiving any refund. They might thus be deterred from seeking a refund or feel compelled to join the Association.

Consequently, the failure of the Association to supply the necessary information to Baker undermined her rights under §202 of the Taylor Law.

The Association's exception based upon the absence of appellate steps in the refund procedure is also rejected. We have already ruled that an employee's right to agency shop fee refund information is necessary to enable him to decide whether to exercise his right to challenge the amount of the refund in court. East Moriches Teachers Association, 14 PERB ¶3056 (1981).

NOW, THEREFORE, WE ORDER the Association:

1. to refund to Baker the amount of her agency fee deduction for 1980-81 which the Association did not forward to its affiliates less the sum refunded on October 15, 1981, with interest at the rate of nine (9) percent per annum from October 15, 1981, the date of receipt of refund determination, and
2. at the time of making any other and future refunds, to furnish, together with those refunds, an itemized, audited statement of its receipts and disbursements, and those of any of its affiliates receiving any portion of its revenues from agency fees, such statement to indicate the basis of the determination of the amount of refund, including identification of those disbursements of the Association and its affiliates that are refundable and those that are not, and

3. to post a notice in the form attached, at every facility at which any unit personnel are employed, on bulletin boards to which it has access by contract, practice or otherwise.

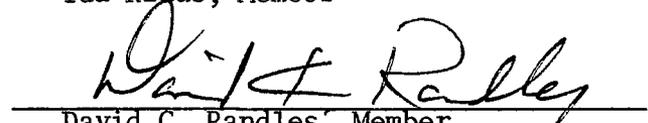
DATED: October 28, 1982
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, 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 unit employees that:

1. The St. Lawrence-Lewis County BOCES Teachers Association will refund to Deborah L. Baker that portion of her agency shop fee deduction for 1980-81 which was not forwarded to its affiliates, less the sum already refunded, with interest at the rate of nine (9) percent per annum from October 15, 1981.
2. We will, at the time of making agency fee refunds, furnish together with those refunds an itemized, audited statement of our receipts and disbursements, and those of any of our affiliates receiving any portion of their revenues from agency fees or dues, such statement to indicate the basis for the determination of the amount of refund, including identification of those disbursements of the St. Lawrence-Lewis County BOCES Teachers Association and its affiliates that are refundable and those that are not.

ST. LAWRENCE-LEWIS COUNTY BOCES TEACHERS ASSOCIATION
..... (Employee Organization)

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

#21-10/28/82

In the Matter of
CITY OF NEWBURGH,

BOARD DECISION AND ORDER

Respondent,

CASE NO. U-5834

-and-

LOCAL 589, INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS, AFL-CIO,

Charging Party.

In the Matter of

LOCAL 589, INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS, AFL-CIO,

Respondent,

CASE NO. U-5870

-and-

CITY OF NEWBURGH,

Charging Party.

In the Matter of

LOCAL 589, INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS, AFL-CIO,

Respondent,

CASE NO. U-6013

-and-

CITY OF NEWBURGH,

Charging Party.

WILLIAM KAVANAUGH, ESQ., for the City of Newburgh

CRAIN AND RONES, ESQS. (JOSEPH P. RONES, ESQ., of
Counsel), for Local 589, International Association
of Fire Fighters, AFL-CIO

* 7829

Local 589, International Association of Fire Fighters, AFL-CIO (Local 589) represents firefighters employed by the City of Newburgh (City) and at all times relevant to the charges before us, Local 589 and the City were parties to a collective bargaining agreement. In May 1981, the City reduced the number of fire fighters per shift from twelve to eleven and Local 589 requested negotiations on the impact of the reduction. Each of the three charges before us grew out of these circumstances. Dissatisfied with the City's negotiation posture, Local 589 both declared an impasse and charged the City with a refusal to negotiate in good faith (U-5834). The remaining two charges were filed by the City. They both allege that Local 589 acted improperly by declaring impasse: first, because there had not yet been sufficient negotiation for an impasse to have been reached (U-5870); and second, because the existing contract relieved the parties of any duty to submit to impasse procedures (U-6013). All three of the charges were decided against the City, and they come to us on its exceptions. The hearing officer had consolidated U-5834 and U-5870. We now consolidate U-6013 with the other cases for purposes of decision.

FACTS

Antedating the three charges, but relevant to them, is a fourth charge (U-5649) growing out of the same circumstances. It was that charge in which Local 589 first alleged that the City unilaterally reduced the number of fire fighters and refused to negotiate the impact of the reduction. The charge was withdrawn on October 15, 1981, pursuant to the parties' stipulation obligating the City to negotiate the impact of the shift reduction. The stipulation indicated that one of the subjects of negotiation would be whether or not an impact situation exists, with both parties agreeing to exchange pertinent information bearing upon this question.

Thereafter, the parties held two brief meetings at which Local 589 presented information and argument in support of its claim that the reduced manning level increased the workload of the remaining employees as well as the likelihood of injury to them. The City did not challenge Local 589's information or respond to its arguments. It merely stated that it was not persuaded that there had been any impact and refused to make any response to Local 589's substantive proposals either by way of comment or proposals of its own.

Without asking the City to meet with it further, Local 589 declared an impasse. At this point Local 589 also filed the charge in U-5834 complaining about the City's unilateral reduction of manning levels and its refusal to negotiate the impact of that action. The City then filed the charge in U-5870 complaining that Local 589's declaration of impasse was premature.

While the two charges were pending, the City filed its charge in U-6013 in which it complained that Local 589 committed an improper practice by declaring an impasse because it and the City were parties to a still valid contract.^{1/} The Director of Public Employment Practices and Representation (Director) dismissed this charge determining that the City's complaint in U-6013 merely repeated its complaint in U-5870. The City's exceptions argue that the two charges allege different causes of action, the first being that the declaration of impasse was premature and the second

^{1/}This charge also complained that PERB erred in that its Director of Conciliation assigned a mediator although there was no impasse. The Director dismissed this allegation of the charge, saying that an improper practice charge is not the appropriate vehicle for challenging PERB's authority to assign a mediator. The City did not file exceptions to this part of the Director's decision. Instead, it brought an Article 78 proceeding to preclude mediation. The matter is still pending before the court.

being that the declaration of impasse was barred by the existence of an agreement.

Dealing with U-5834 on its merits, the hearing officer found that the City refused to negotiate the impact of the decision, determining that the City's conduct constituted surface bargaining.^{2/}

The City's exceptions to this decision first argue that the hearing officer erred in finding that an allegation of surface bargaining was before her. They further argue that the City was free to deny that there was any impact and that it was not legally obliged to make a counterproposal. Thus, on the merits, it committed no wrong.

Dealing with U-5870 the hearing officer dismissed the City's charge that Local 589 declared an impasse prematurely. In its exceptions, the City asserts, as it did in its exception to U-5870, that it was not obliged to make any proposals. On the basis of this assertion, it argues that its failure to make proposals during the two negotiating sessions could not justify Local 589's declaration of impasse. Echoing its charge in U-6013, the City also argues that Local 589's declaration of impasse was improper because there was a valid contract between the parties.

DISCUSSION

U-6013

We affirm the decision of the Director dismissing U-6013. In doing so, we do not reach the question whether he abused his discretion in dismissing the charge on the ground that it duplicated U-5870. We find that the charge

^{2/}The hearing officer also dismissed a specification of Local 589's charge which alleged that the City acted improperly by unilaterally reducing manning levels. She ruled that such a reduction is not a mandatory subject of negotiation. No exceptions were filed to this part of her decision.

in U-6013 is not sufficient in any event. In settling U-5649, the City assumed an obligation to negotiate the impact of its reduction in force. Thus, even if there was a basic contract between the parties whose terms would have relieved the City of an obligation to negotiate the impact of its reduction of forces,^{3/} the City, by its subsequent agreement to negotiate, waived its right to stand on that contract.

We reject the City's further argument that a duty to negotiate during the life of a contract does not carry with it the duty to submit to impasse procedures. To the contrary, we conclude that the impasse procedures specified in §209 of the Taylor Law apply wherever there is a statutory obligation to negotiate and the parties fail to reach an agreement. This conclusion is dictated by the public policy underlying the Taylor Law which, in an effort to foster harmonious and cooperative relations in the public sector, and to avoid strikes, both requires public employers to negotiate with the organizations representing their employees and directs this Board to assist in the resolution of negotiation disputes.

U-5834

We reject the City's argument that it committed no wrong because it was entitled to deny the existence of any impact and was not obliged to make a counterproposal to Local 589. That argument is based upon a misreading of Schuyler-Chemung-Tioga BOCES, 15 PERB ¶3036 (1982). In Schuyler-Chemung-Tioga BOCES, the employer listened to the union's presentation with an open mind, engaged in "considerable discussion" regarding the union's

^{3/}The charge does not allege that any provision of the parties' basic contract constitutes an express waiver of the union's right to negotiate impact.

presentation and even explored certain compromises. Here, the City listened to Local 589's presentation at the two negotiating sessions but refused to engage in any meaningful discussions and was unwilling to explore the possibility of any compromise. According to the hearing officer, the City's conduct reflected the absence of a sincere desire to reach an agreement. We agree. This conduct, and the attitude it represents, constitutes a refusal to negotiate in violation of §209-a.1(d) of the Taylor Law.^{4/}

U-5870

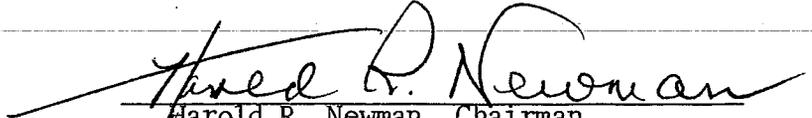
We affirm the hearing officer's decision dismissing the allegation that Local 589 declared impasse prematurely. The City's refusal to negotiate in good faith created an impasse under the Taylor Law, that is, a situation in which there was no reasonable expectation that further negotiations would be fruitful without third-party assistance.^{5/} Certainly, as noted by the hearing officer, the City cannot be heard to deny the existence of an impasse on the ground that there were insufficient prior negotiations when its own conduct precluded meaningful negotiations.

^{4/}The hearing officer characterized the City's conduct as "surface bargaining" which has led to the City's argument that the charge did not specifically allege "surface bargaining".

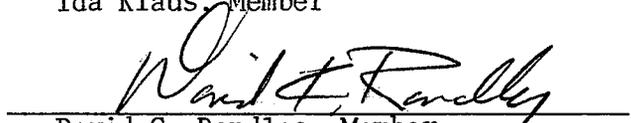
^{5/}Notwithstanding the existence of an impasse, this Board may withhold third-party assistance from the party seeking it when the improper conduct of that party is responsible for the impasse. Haverstraw, 9 PERB ¶3063 (1976), Binghamton Fire Fighters, 9 PERB ¶3072 (1976). On the other hand, even the innocent party may not refuse to participate in negotiations before a mediator appointed by this Board's Director of Conciliation. Uniformed Fire Fighters Association of Mt. Vernon, 11 PERB ¶3095 (1978). A fortiori, the City, having improperly refused to negotiate in good faith, cannot now refuse to participate in negotiations before a mediator.

NOW, THEREFORE, WE ORDER that the exceptions herein be, and they
hereby are, dismissed.

DATED: October 28, 1982
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#3A-10/28/82

In the Matter of :

TOMPKINS-CORTLAND COMMUNITY COLLEGE, :

Employer-Petitioner, :

-and- :

TOMPKINS-CORTLAND COMMUNITY COLLEGE
TEACHERS, LIBRARIANS AND COUNSELORS
ASSOCIATION, :

Intervenor. :

Case No. C-2482

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 the Tompkins-Cortland Community College Teachers, Librarians and Counselors Association 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 full-time and regular part-time teaching faculty; librarians; counselors; T.A. Biology Lab (ETS); Admissions Officer; T.A. Math Lab (ETS); T.A. Nursing Lab (NAH); T.A. Media Engineer (LRC); T.A. Accounting Lab (BPS); Placement & Transfer

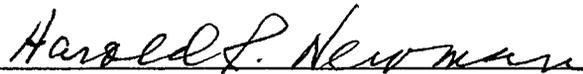
7836

Coordinator; T.A. Media Specialist (LRC); T.A. Reading Lab (LAH); T.A. Media Services (LRC); T.A. Secretarial Science Lab (BPS); T.A. Writing Lab (LAH); T.A. Graphics Artist (LL).

Excluded: All other employees of the employer.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Tompkins-Cortland Community College Teachers, Librarians and Counselors 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.

DATED: October 27, 1982
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#3B-10/28/82

In the Matter of :
BROADALBIN CENTRAL SCHOOL DISTRICT, :
Employer, : Case No. C-2500
-and- :
CIVIL SERVICE EMPLOYEES ASSOCIATION, :
INC., LOCAL 1000, AFSCME, 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 the Civil Service Employees Association, Inc., Local 1000, AFSCME, 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 full-time and part-time non-instructional employees.

Excluded: Bus Drivers, Secretary to the Superintendent, and Head Mechanic (Acting Bus Garage Manager).

7838

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, AFSCME, 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.

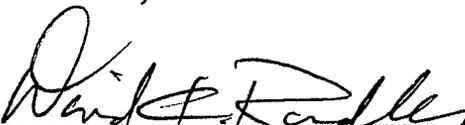
DATED: October 27, 1982
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

_____ : #3C-10/28/82
In the Matter of :
TOWN OF ISLIP, :
Employer, :
-and- : Case No. C-2451
TOWN OF ISLIP EMPLOYEES ASSOCIATION, :
Petitioner, :
-and- :
LOCAL 237, INTERNATIONAL BROTHERHOOD :
OF TEAMSTERS, :
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 237, International Brotherhood of Teamsters 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 employees in the existing Town of Islip blue collar unit as set forth in the attached schedule.

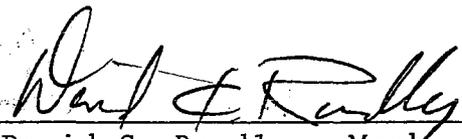
Excluded: All other employees, including elected or appointed officials, department heads and deputies, designated confidential employees, part-time employees, seasonal employees, and temporary employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 237, International Brotherhood of Teamsters 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.

DATED: October 27, 1982
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

TOWN OF ISLIP BLUE COLLAR EMPLOYEES

Laborer	Maintenance Mechanic III
Custodial Worker I	Waterways Maintenance Mechanic II
Sanitation Helper	Airport Maintenance Mechanic III
Guard	Senior Water Meter Reader
Groundskeeper I	Senior Water Meter Collector
Kennel Attendant	Construction Equipment Operator
Automotive Equipment Operator	Sewerage Treatment Plant Operator
Groundskeeper II	Tree Trimmer I
Custodial Worker II	Auto Mechanic III (Diesel)
Automotive Mechanic I	Pump Operator (#2 License)
Warehouse Worker II	Labor Crew Leader
Weighmaster	Highway Labor Crew Leader
Maintenance Mechanic I	Harbor Manager III
Driver Messenger	Groundskeeper II
Harbor Manager I	Sr. Airport Security Officer
Material Control Clerk I	Custodial Worker III
Dispatcher	Senior Guard
Guard II	Senior Dog Warden
Maintenance Mechanic II	Sign Painter II
Guard III	Sr. Airport Fire Safety Officer
Painter I	Maintenance Mechanic IV
Dog Warden	Automotive Mechanic IV
Water Meter Reader	Sanitationer III
Water Meter Repairer	Waterways Maintenance Mechanic III
Airport Security Officer	Sewerage Treatment Plant Operator
Material Control Clerk II	(Type B)
Sign Painter I	Incinerator Plant Manager
Automotive Equipment Operator II	Water District Maintenance
Harbor Manager II	Crew Leader
Automotive Mechanic II	Town Building Maintenance Crew
Heavy Equipment Operator	Leader
Automotive Mechanic III	Tree Trimmer II
Material Control Clerk III	Automotive Mechanic IV (Diesel)
Airport Fire Safety Officer	Highway Labor Crew Leader
	Incinerator Plant Supervisor

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#3D-10/28/82

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,
LOCAL 1000, AFSCME, AFL-CIO, :

Intervenor. :

Case No. C-2392

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 the Sewanhaka School Employees 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.

7843

Unit: Included: All clerical personnel and approved civil service support personnel that may include, but is not limited to, library aides, laboratory assistants, monitors and audio-visual helpers; exclusive of casual employees and employees designated as managerial or confidential under provisions of the Civil Service Law.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Sewanhaka School Employees 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.

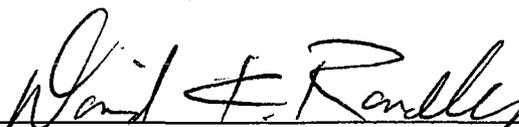
DATED: October 27, 1982
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#3E-10/28/82

In the Matter of :

MOHONASEN CENTRAL SCHOOL DISTRICT, :

Employer, :

-and- :

MOHONASEN TEACHERS ASSOCIATION
#3840, NYSUT, AFT, AFL-CIO, :

Petitioner, :

Case No. C-2446

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 the Mohonasen Teachers Association #3840, 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.

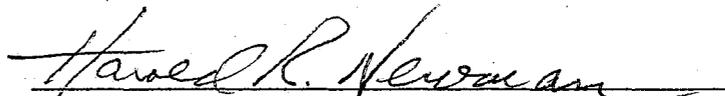
Unit: Included: Substitute teachers who have received the reasonable assurance of continuing employment in accordance with subdivision 10 of section 590 of the labor law which is sufficient to disqualify the substitute teacher from receiving unemployment insurance benefits.

7845

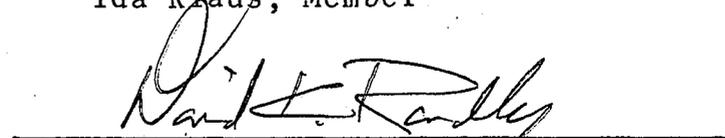
Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Mohonasen Teachers Association #3840, 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.

DATED: October 27, 1982
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

Resubmitted 11/30/12

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

NOTICE OF PROPOSED AGENCY ACTION

Pursuant to the provisions of the State Administrative Procedure Act, NOTICE is hereby given of the following proposed agency action:

1. Proposed action:

Amendment of Board Rules 4 NYCRR Chapter VII Part 201

2. Statutory authority under which the action is proposed:

Article 14 of the Civil Service Law

3. Subject of the proposed action:

Relettering of subdivision (b) of Rule §201.2 to be subdivision (c), adding a new subdivision (b). Amending title of Rule §201.5 and adding a new subdivision (c) to such section.

4. Purpose of the proposed action:

To permit the filing of a certification petition with respect to newly created or altered positions so as to ascertain the proper bargaining unit placement of such position.

5. Terms of the proposed action:

The proposed rule, amendment, suspension, or repeal contains 2,000 words or less. The original ribbon copy of the express terms of the proposed action is a part of this notice and is attached to this form. The typing for the express terms conforms to the instructions presented in section 260.2 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

6. The express terms of proposed action may be obtained from:

Name of agency representative: Jerome Lefkowitz, Deputy Chairman
Office address: New York State Public Employment Relations
Board
50 Wolf Road, Albany, NY 12205
Telephone number: (518) 457-2614

7. Regulatory impact statement:

A regulatory impact statement of 2,000 words or less is submitted with this notice.

8. A public hearing is not required by law, and a public hearing has not been scheduled.

9. Data, views or arguments may be submitted to:

Name of agency representative: Jerome Lefkowitz, Deputy Chairman
Office address: New York State Public Employment
Relations Board
50 Wolf Road, Albany, NY 12205
Telephone number: (518) 457-2614

10. Additional matter required by statute:

Not applicable

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed article 2 of the State Administrative Procedure Act and Parts 260, 261, 262 and 263 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York, and I hereby certify that this notice complies with all applicable provisions.

This notice was prepared by:

Harold R. Newman

Name: Harold R. Newman, Chairman
Address: New York State Public Employment Relations
Board
50 Wolf Road, Albany, NY 12205
Telephone: (518) 457-2578
Dated: November 29, 1982

REGULATORY IMPACT STATEMENT

The current rules permit the filing of a certification petition during the challenge period set forth in 4 NYCRR Section 201.3. However, they make no provision for addressing the situation resulting from the creation or reclassification of positions not covered by a prior public employer's recognition or a certification order by the agency. Conceivably, therefore, a period of years may elapse during which incumbents of newly created or reclassified positions are deprived of the rights granted to public employees by Article 14 of the Civil Service Law merely because current agency rules do not provide a mechanism for addressing the problem. While the need sought to be addressed is not, with respect to any particular public employer, very large, it does on an accumulative basis represent a cognizable irritant to the smooth and effective implementation of Article 14 of the Civil Service Law. The proposed rule provides a mechanism for addressing this problem.

STATUTORY AUTHORITY: Civil Service Law Article 14, Section 205.5

RELATIONSHIP WITH STATE AND FEDERAL REQUIREMENTS: None

REPORTING REQUIREMENTS: None

ECONOMIC ANALYSIS: The proposed agency action will have no impact on the state economy and will not increase the cost to (a) state government, (b) local governments, (c) regulated parties, or (d) the general public.

~~VIABLE ALTERNATIVE: None~~

CONTACT PERSON: Jerome Lefkowitz, Deputy Chairman, New York State Public Employment Relations Board, 50 Wolf Road, 5th Floor, Albany, New York, 12205, (518) 457-2614.

Section 201.2 of the Rules of the Public Employment

Relations Board (4 NYCRR, Chapter VII) is hereby amended by relettering subdivision (b) to be subdivision (c) and by adding thereto a new subdivision to be subdivision (b) to read as follows:

(b) Notwithstanding sections 201.3 and 201.4 of these Rules, a petition may be filed by a public employer or a recognized or certified employee organization to clarify whether a new or substantially altered position is encompassed within the scope of an existing unit, or to determine the unit placement of a new or substantially altered position. The filing and processing of the petition shall be in accordance with sections 201.5(c), 201.7(a) and (d), 201.8, 201.9(a)-(f), and 201.11 of these Rules. In determining the unit placement of any new or substantially altered position, the Director shall consider whether the placement would be consistent with the criteria set forth in section 207 of the Act. The Director may decline to make any clarification or placement not otherwise consistent with the purposes or policies of the Act. Exceptions to any determination of the

Director may be filed pursuant to section 201.12 of these Rules.

The title of Section 201.5 of such Rules is hereby amended to read as follows:

Contents of Petition for Certification; Contents of
Petition for Decertification; Contents of Petition to Clarify Existing
Unit or to Determine Unit Placement of New or Substantially Altered
Positions.

Section 201.5 of such Rules is hereby amended by adding thereto a new subdivision (c) to read as follows:

(c) Petitions filed pursuant to section 201.2(b) shall contain the following:

- (1) The name, affiliation, if any, and address of the recognized or certified employee organization.
- (2) The name and address of the public employer involved.
- (3) A description of any affected existing negotiating unit, a copy of any applicable certification or recognition, and the date thereof.

(4) The number of employees in the existing unit and in the unit proposed in the petition.

(5) The job description and classification of each new or substantially altered position and the date of its establishment.

(6) The name and address of any other employee organization which claims to represent the new or substantially altered position.

(7) A copy of any contract affecting the new or substantially altered position.

(8) A statement by the petitioner setting forth the details of the desired clarification or placement and the reasons therefor.