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10-29-1982

State of New York Public Employment Relations Board Decisions from October 29, 1982

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from October 29, 1982

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#1A-10/29/82

In the Matter of

ROCKLAND COUNTY SHERIFF'S CORRECTION
OFFICERS ASSOCIATION,

CASE NO. D-0230

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

ROGERS, FERRARO & CODY, P.C. (GARY R. GOLDMAN, ESQ.,
of Counsel), for Respondent

MARTIN L. BARR, ESQ. (ANTHONY CAGLIOSTRO, ESQ.,
of Counsel), for Charging Party

BOARD DECISION AND ORDER

On January 14, 1982, Counsel to this Board (Charging Party) filed a charge against the Rockland County Sheriff's Correction Officers Association (Association) alleging that it was responsible for a strike by correction officers employed by the County of Rockland (County) on June 22, 1981. The Association denied the material allegations of the charge and asserted that the charge was not timely filed ^{1/}. After a hearing, the hearing officer recommended that the charge be dismissed on the ground that the filing of the charge was not timely and charging party has filed a brief with us in which he urges the rejection of that recommendation.

^{1/} It also alleged that its responsibility, if any, for the strike was diminished because the County engaged in acts of extreme provocation. It introduced no evidence to support this allegation.

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Twenty-eight of thirty-five correction officers scheduled to work at the County Jail absented themselves from work on June 22, 1981. When charging party was informed of these absences he commenced an investigation to ascertain whether they constituted a strike and if so, whether the Association was implicated in the strike. During August 1981, in the course of his investigation, charging party sought the names of the Association's officers so as to ascertain whether any of them were scheduled to work at the time of the alleged strike and, if so, whether they were among the absentees. He requested this information of the County which did not provide it to him until January 1982. Upon receiving the information, charging party brought the charge herein.

In dismissing the charge, the hearing officer stated that charging party's six-month delay in bringing it was excessive by reason of charging party's "failure to actively investigate" and his reliance upon the "less than diligent assistance" of the employer. In doing so he relied upon our decision in Local 2055, 15 PERB ¶3070 (1982). In that case, we rejected a hearing officer's conclusion that §210.3(c) of the Taylor Law required Counsel to bring the strike charge "as soon as possible", but determined that an 18-month delay was excessive even under what were unusual circumstances.^{2/}

While setting no mathematical formula or specific time limits for the bringing of a strike charge, we ruled that a charge must be brought with reasonable expedition. What is reasonable depends upon such circumstances as charging party's difficulty in investigating the strike, and the extent

2/ A strike charge had originally been brought by the chief legal officer of the government involved, but after thirteen months, the chief legal officer decided not to continue prosecuting the charge. Counsel waited an additional five months before bringing his own charge.

to which the delay prejudices the respondent employee organization. We also consider the express requirement of the Taylor Law that charges be brought against striking employee organizations. Section 213(e) of the Taylor Law authorizes a taxpayer action to compel the bringing of a charge if it is not brought forthwith. This provision contemplates the bringing of a charge after the strike has terminated. Applying these considerations, we do not find the six-month delay in the bringing of the charge herein to violate the standard of reasonable expedition and we, therefore, reverse the hearing officer's decision dismissing the charge.

Notwithstanding the fact that the hearing officer did not consider the merits of the charge because he found that it was not timely, it is not necessary for us to remand this matter to him because the record is complete and the merits of the charge have been addressed in the briefs of the parties. Having reviewed the record and considered those arguments, we conclude that there was a strike and that the Association engaged in and condoned it.^{3/} Five of the eight officers of the Association were scheduled to work on one of the other of the two shifts affected by the strike, and none came to work. This is sufficient to support a conclusion of the Association's participation in the strike. Local 69, AFSCME, 3 PERB ¶13091 (1970).

By reason of its potential impact, a strike by correction officers must be dealt with severely even if the actual impact upon the health, safety and welfare of the community is not substantial. Here the impact of the strike was limited to the loss of recreational services to the jail inmates, the curtailment of their medical services, the cancellation of court activities,

^{3/} There is no evidence that the Association caused, instigated or encouraged the strike.

the County's need to man the jail with nonunit employees who otherwise would have performed different activities, and the potential danger to the community inherent in increased tension at the jail.

In determining the penalty to be assessed upon the Association, we note this impact. We also note the absence of evidence that the Association caused, instigated or encouraged the strike. As required by the statute, we consider the financial resources of the Association. The record reveals no bank account but shows that the Association collects \$260 dues annually from each of 56 unit employees. More importantly, we note that this is a second strike by the Association, an earlier strike having taken place on September 2, 1980 for which it lost its checkoff privileges for five months. Rockland County Sheriffs Correction Officers Association, 14 PERB ¶3016 (1981).

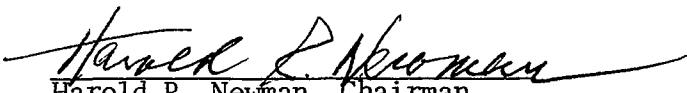
Considering each of these factors, we determine that the dues deduction and agency shop fee privileges of the Association should be lost for an indefinite period, but not less than twelve months.

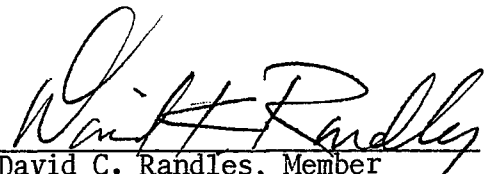
NOW, THEREFORE, WE ORDER that the dues deduction and agency shop fee privileges of Rockland County Sheriff's Correction Officers Association be forfeited indefinitely, commencing on the first practicable date, provided that Rockland County Sheriff's Correction Officers Association may apply to this Board at any time after twelve months have elapsed from the commencement of the forfeiture for the restoration of such dues deduction privileges, such application to be on notice to all interested parties and supported by proof of good faith compliance with subdivision one of Section 210 of the Civil Service Law since the violation

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herein found, and accompanied by an affirmation that it no longer asserts the right to strike against any government as required by the provisions of Civil Service Law §210.3(g).

DATED: October 29, 1982
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#1B-10/29/82

In the Matter of

BELLMORE-MERRICK CENTRAL SCHOOL DISTRICT,

Respondent,

CASE NO. U-5506

-and-

BELLMORE-MERRICK UNITED SECONDARY TEACHERS
ASSOCIATION,

Charging Party.

GINSBERG, EHRLICH, REICH & HOFFMAN, ESQS.,
for Respondent

FRIEDLANDER, GAINES, COHEN, ROSENTHAL &
ROSENBERG, ESQS. (JOSEPH S. ROSENTHAL, ESQ.
and STEPHEN H. KAHN, ESQ., of Counsel),
for Charging Party

BOARD DECISION AND ORDER

The charge herein was filed by the Bellmore-Merrick United Secondary Teachers Association (Association). It alleges that the Bellmore-Merrick Central School District (District) denied six of its high school teachers various extra compensation assignments because each was an officer of or otherwise active in the Association. After a five-day hearing which produced almost 1,000 pages of testimony, the hearing officer determined that the record did not support a conclusion that five of the six teachers involved were denied extra compensation assignments because of their activities on behalf of the Association. He further found that one of them, Patrick Linehan, was denied the extra compensation assignment of dean of students because of his activities on behalf of the Association and that, when he subsequently applied for cafeteria duty, he was denied that extra compensation assignment for the same reason.

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The matter now comes to us on the exceptions of the District to the hearing officer's determination that it "violated §209-a.1 (a) and (c) of the Act by refusing to appoint Linehan as dean or to cafeteria duty at Jerusalem Avenue Junior High School for the 1981-82 school year."^{1/} It also comes to us on the exceptions of the Association to the hearing officer's dismissal of the specifications of the charge involving the other five teachers and to the remedy with respect to Linehan as being inadequate.^{2/} In support of these exceptions, both parties have submitted voluminous memoranda which provide many record citations in support of their respective positions. However, having reviewed the extensive record as a whole, we affirm the hearing officer's conclusions both of fact and of law. Accordingly, we dismiss the exceptions.

NOW, THEREFORE, WE ORDER the District to:

1. Compensate Patrick Linehan for all wages and benefits which he would have earned in the position of dean at Jerusalem Avenue Junior High School during the 1981-82 school year, together with interest on such amount at the rate of nine percent per annum.

^{1/}Of the 35 enumerated exceptions, most dealt with technical matters such as the hearing officer denying it an opportunity to examine the person signing the charge regarding the source of the information upon which he based the charge and the issuance of a subpoena duces tecum. They are all rejected because they have no basis in either law or fact or because they do not involve substantial matters which prejudice the District.

Among other things, the District requested Board Chairman Newman to recuse himself on the ground that he signed the subpoena duces tecum. The request is denied.

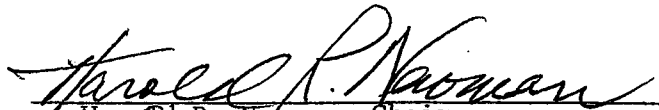
^{2/}It complains that the hearing officer did not order the compensation of Linehan for the loss of both the deanship and the cafeteria positions. Reasoning that Linehan would not have applied for the cafeteria position if he had been reappointed dean, the hearing officer did not do so. We affirm this conclusion.

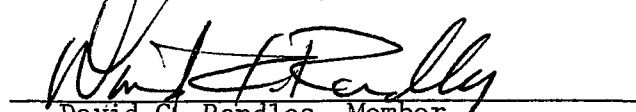
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2. Forthwith consider the position of dean at the Jerusalem Avenue Junior High School for 1982-83 to be open and to consider Linehan for the position without taking into account his participation in activities protected by the Act, provided that within ten days from the date of receipt of this decision Linehan applies, in writing, for this position.
3. Cease and desist from interfering with the exercise by employees of rights protected by the Act and from discriminating against employees on account of their exercise of rights protected by the Act.
4. Conspicuously post copies of the Notice attached hereto at all locations ordinarily used to communicate with members of the unit represented by the Association.

WE FURTHER ORDER that all specifications of the charge herein, other than those concerning Patrick Linehan, be and they hereby are, dismissed.

DATED: October 29, 1982
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member

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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 employees that the Bellmore-Merrick Central School District (District) will:

1. Compensate Patrick Linehan for all wages and benefits which he would have earned in the position of dean at Jerusalem Avenue Junior High School during the 1981-82 school year, together with interest on such amount at the rate of nine percent per annum.
2. Forthwith consider the position of dean at the Jerusalem Avenue Junior High School for 1982-83 to be open and to consider Linehan for the position without taking into account his participation in activities protected by the Act, provided that within 10 days from the date of receipt of this decision Linehan applies, in writing, for this position.
3. Not interfere with the exercise by employees of rights protected by the Act and will not discriminate against employees on account of their exercise of rights protected by the Act.

Bellmore-Merrick Central School District
.....
Employer

Dated

By
(Representative) (Title)

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

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