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Board (PERB)

12-17-1982

State of New York Public Employment Relations Board Decisions from December 17, 1982

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from December 17, 1982

Keywords

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-12/17/82

In the Matter of

COUNTY OF ONTARIO and ONTARIO COUNTY
SHERIFF,

Joint Employer,

CASE NO. C-2458

-and-

ONTARIO SHERIFFS' UNIT, ONTARIO COUNTY
LOCAL, CSEA, INC.,

Petitioner.

JOHN W. PARK, ESQ., for Joint Employer

LEE FRANK, for Petitioner

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the County of Ontario and the Ontario County Sheriff, both constituting the joint employer herein, to a decision of the Director of Public Employment Practices and Representation (Director).^{1/} In his decision, the Director found a unit to be appropriate which consists of all full-time employees of the joint employer and all its regularly scheduled

^{1/}At present the deputy sheriffs are in a unit represented by the Ontario County Unit, Ontario County Local CSEA, Inc., Local 1000, AFSCME, AFL-CIO. That organization has not sought to intervene in this proceeding.

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part-time employees within the same titles. The joint employer had wanted its employees to be included in the same unit as employees of the County.

The joint employer's only objection to the decision is that it contains an inaccurate statement that "it agrees with the petitioner that a separate [footnote omitted] unit should be established." It acknowledges, however, that the unit determined to be appropriate is, in fact, consistent with the statutory standards found in §207 of the Taylor Law. It argues that the language of the decision does not reveal its disagreement with the statutory standards.^{2/}

We reject the exceptions herein. They are directed not to any operative part of the decision, but to a sentence in the decision that is not a necessary part of its rationale and, therefore, is not, as a matter of law, prejudicial.

Accordingly, we find the following unit to be appropriate:

Included: All full-time employees, and all regularly scheduled part-time employees within the same titles, in the Sheriff's Department.

^{2/}The record establishes that the joint employer objected to the unit but that it acknowledged that it had no legal basis for its objection.

Excluded: Sheriff; Undersheriff; Chief Deputy Sheriff; Chief Dispatcher; Chief Correction Officer; Senior Stenographer/Secretary to Sheriff; Stenographer/Secretary to Undersheriff; and seasonal employees.

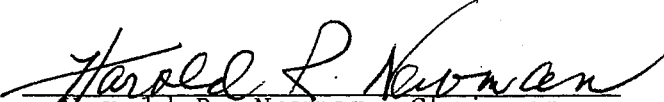
NOW, THEREFORE, WE ORDER:

1. that an election by secret ballot shall be held under the supervision of the Director among the employees in the unit above described, who were employed on the payroll date immediately preceding the date of this decision, unless the petitioner, within ten days from the date of receipt of this decision, submits to him evidence to satisfy the requirements of §201.9(g)(1) of the Rules of Procedure for certification without an election, and
2. that the joint employer submit to the Director and the petitioner, within ten days from the date of receipt of this decision, an alphabetized list of all employees in the unit determined above to be appropriate who were employed on the

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payroll date immediately preceding the
date of this decision.


DATED: December 17, 1982
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-12/17/82

In the Matter of
TOWN OF NORFOLK,

Employer,

-and-

TEAMSTERS LOCAL UNION NO. 687,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA,

Petitioner.

BOARD DECISION AND
ORDER

CASE NO. C-2490

On June 28, 1982, Teamsters Local 687, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition for certification as the exclusive negotiating representative of certain employees employed by the Town of Norfolk.

The parties executed a Consent Agreement wherein they stipulated that the negotiating unit would be as follows:

Included: All M.E.O.'s, truck drivers,
waste treatment plant operators
and laborers.

Excluded: All supervisory, clerical and
elected town officials.

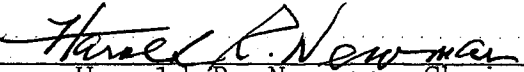
Pursuant to the Consent Agreement and in order for the petitioner to demonstrate its majority status, a secret ballot

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election was held on November 15, 1982. The results of the election indicate that a majority of the eligible voters in the stipulated unit do not desire to be represented by the petitioner.^{1/}

THEREFORE, IT IS ORDERED that the petition be, and it hereby is, DISMISSED.

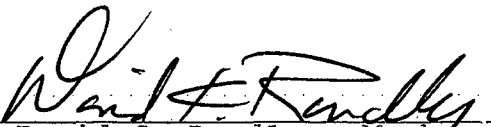
Dated at Albany, New York
This 17th day of December, 1982



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

^{1/} Of the eight ballots cast, four were for and four were against representation by the petitioner. There were no challenged ballots.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #3A-12/17/82
:
BOARD OF EDUCATION OF THE CITY SCHOOL :
DISTRICT OF THE CITY OF NEW YORK, :
:
Employer, :
:
-and- : Case No. C-2368
:
PUBLIC SERVICE PROFESSIONAL :
ASSOCIATION, :
:
Petitioner, :
:
-and- :
:
LOCAL 300, SERVICE EMPLOYEES :
INTERNATIONAL UNION, :
:
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 300, Service Employees International Union 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.

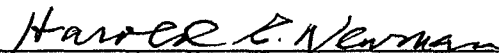
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Unit: Included: Assistant Buyer, Buyer, Senior Buyer,
Supervising Buyer, Purchase Inspector,
Senior Purchase Inspector, Principal
Purchase Inspector.


Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 300, Service Employees International Union 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.

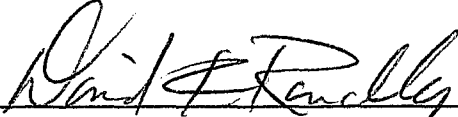
DATED: December 17, 1982
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

_____ : #3B-12/17/82
In the Matter of :
JERVIS PUBLIC LIBRARY ASSOCIATION, :
 :
Employer, :
 : Case No. C-2198
-and- :
ONEIDA COUNTY LOCAL 833, CIVIL SERVICE :
EMPLOYEES ASSOCIATION, 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 Oneida County Local 833, Civil Service Employees Association, 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 and part time employees in
the following titles: Cleaning
Person, Principal Library Clerk,


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Library Clerk, Payroll/Account Clerk, Caretaker's Assistant, Supervising Library Clerk, Account Clerk, Caretaker, Senior Library Clerk, Senior Library Clerk (Evening), Guard.

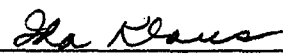
Excluded: Director, Assistant Director, Library Pages (Student Aides), Secretary (Secretary to the Director), Librarian, Senior Librarian, Principal Librarian, Children's Librarian, Reference Librarian and casual employees not entitled to representation under the Taylor Law.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Oneida County Local 833, Civil Service Employees Association, 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.

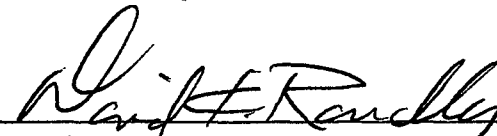
DATED: December 17, 1982
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#3C-12/17/82

In the Matter of

COUNTY OF WAYNE,

Employer-Petitioner,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION,
LOCAL 1000, AFSCME,

Intervenor,

Case No. C-2455

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, Local 1000, AFSCME 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: Senior social welfare examiner, senior building maintenance mechanic, senior maintenance mechanic, probation supervisor, assistant director of nursing.


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services, supervising nurse, head nurse, housekeeper (nursing home), assistant housekeeper (nursing home), leisure time activities director, supervising support collector, accounting supervisor, principal audit clerk (department of social services), principal account clerk (department of social services), principal social welfare examiner, head social welfare examiner, assistant director of real property tax services, park foreman, payroll supervisor, motor vehicle bureau supervisor, highway construction foreman, high maintenance foreman, automotive mechanic foreman, tax map supervisor, supervising public health nurse, assistant director of data processing, criminal investigator (D.A.'s office).

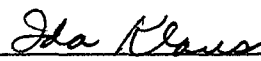
Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Local 1000, AFSCME 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: December 17, 1982
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

_____ : #3D-12/17/82
In the Matter of :
WHITE PLAINS CITY SCHOOL DISTRICT, :
Employer, :
-and- : Case No. C-2504
WHITE PLAINS SUBSTITUTE TEACHERS :
ASSOCIATION, NYSUT, AFT, AFL-CIO, :
Petitioner, :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the White Plains Substitute Teachers Association, NYSUT, AFT, AFL-CIO has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All per diem substitute teachers who in the immediately preceding school year received the reasonable assurance of continuing employment referred to in Civil Service Law §201.7(d).

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the White Plains Substitute Teachers Association, 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: December 17, 1982
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#3E-12/17/82

In the Matter of

SOUTHAMPTON PUBLIC SCHOOLS,

Employer

-and-

SOUTHAMPTON PUBLIC SCHOOL SECRETARIAL
ASSOCIATION,

Petitioner

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION
DIVISION 100, LOCAL 144, AFL-CIO,

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 the Southampton Public School Secretarial 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.

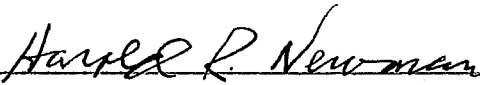
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Unit: Included: Secretary to the Principal, Guidance
 Secretary, Administrative Secretary, Secretary
 to the Business Manager,
 Account Clerk, Secretary to the Super-
 intendent, Secretary to the High School,
 Switch Board Operator


Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Southampton Public School Secretarial 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.

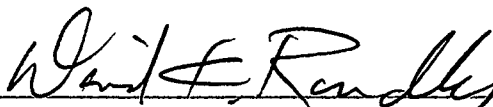
DATED: December 17, 1982
 Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#3F-12/17/82

In the Matter of :
CITY SCHOOL DISTRICT OF THE CITY OF :
BATAVIA, :
Employer, :
-and- :
BATAVIA TEACHERS ASSOCIATION, NYSUT, : Case No. C-2489
AFT, AFL-CIO, :
Petitioner. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

On June 28, 1982, the Batavia Teachers Association, NYSUT, AFT, AFL-CIO (Association) filed a petition seeking to represent a unit of per diem substitute teachers employed by the City School District of the City of Batavia (District). On November 17, 1982, a mail ballot election was held in a unit determined to be appropriate by the Director of Public Employment Practices and Representation (Director). Of 112 eligible voters, 57 cast ballots; 40 voted for the Association, 12 voted against it and 5 ballots were voided.

The District now asserts that the election was not representative because the participation of the unit employees was not sufficient. Among other things, it asserts that the nonparticipation of eligible voters evidences inadequate notice of the election and a disinterest on the part of the voters in being represented by the Association.

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We reject the District's position. Having reviewed the record, we conclude that the eligible voters were informed of the election in that a notice of it was posted at appropriate locations and that each eligible voter was mailed a ballot and a letter of instruction. We also reject the District's argument that nonvoting unit employees must be presumed to have opposed representation by the Association. To the contrary, since all eligible voters were given a reasonable opportunity to vote, the nonvoting unit employees are presumed to consent to the majority decision of those unit employees who did vote. NLRB v. Deutsch Co., 265 F2d 473 (CA9 1959). While the total participation was 46 percent, almost 80 percent of the voters cast ballots for representation by the Association, a clear expression of choice. This constitutes a representative election.

NOW, THEREFORE, pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Batavia Teachers Association, NYSUT, AFT, AFL-CIO 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.

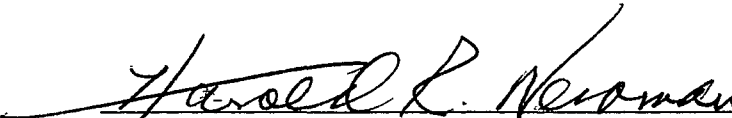
Unit: Included: All per diem substitute teachers who have received a reasonable assurance of continuing employment as referenced in Civil Service Law, §201.7(d).

Excluded: All other employees.

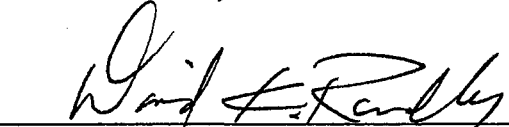
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Batavia Teachers Association, NYSUT, AFT, AFL-CIO and enter into a written agreement with

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: December 17, 1982
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

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