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12-23-1982

# State of New York Public Employment Relations Board Decisions from December 23, 1982

New York State Public Employment Relations Board

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# State of New York Public Employment Relations Board Decisions from December 23, 1982

**Keywords**

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**Comments**

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#1A-12/23/82

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In the Matter of

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

Respondent,

CASE NO. U-6089

-and-

DONALD J. BARNETT,

Charging Party.

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JERRY N. ROTHMAN, ESQ., for  
Respondent

DONALD J. BARNETT, pro se

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Donald J. Barnett to a hearing officer's decision dismissing a charge that he filed against the Board of Education of the City School District of the City of New York (District) on the ground that he would not justify a request he made for an adjournment of a conference scheduled for June 7, 1982.

Both Barnett and the District's representative notified the hearing officer that they could not attend the conference scheduled for June 7. Barnett's letter requesting an adjournment indicated that he was on a sabbatical leave during the Spring term of the 1981-82 school year and was spending his time in Washington, D.C. Thus, he would be unavailable to participate in the

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proceeding until after July 1, 1982, when he would return from Washington. The hearing officer therefore adjourned the conference to a July date to be agreed upon by Barnett and the District.

After the conference had been adjourned, it came to the attention of the hearing officer that Barnett appeared at the New York City office of this Board on June 3, 1982. The hearing officer then wrote to Barnett on June 8 asking for an explanation that would reconcile his presence on June 3 with his statement that he was not available throughout the month of June. Barnett responded on June 12 that inasmuch as the hearing officer had already granted the extension, he no longer had jurisdiction to consider whether he ought to have granted it, and he declined to provide the information requested by the hearing officer. He did, however, indicate that he would be willing to document his presence in Washington on June 7.

Concluding that Barnett's letter was not responsive to his own, the hearing officer wrote to Barnett again on June 23, 1982. Again, he asked for an explanation reconciling Barnett's presence in New York on June 3 with his statement that he would be unavailable in New York City throughout the month of June. The hearing officer indicated he would await Barnett's response until July 7, 1982. There was no response, and on July 12, 1982, the hearing officer wrote his decision dismissing the charge for failure to prosecute and for abuse of process.

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In his exceptions and as to his failure to prosecute, Barnett argues that the District, too, was unavailable on that day, and that the June 7 conference would have been adjourned whether or not he had asked for the adjournment. Thus, argues Barnett, his request did not occasion any delay in the processing of the case or cause any prejudice to the District. We agree. We find more troublesome, however, the finding of abuse of process.

At the outset it should be noted that the fact that he appeared at the New York City office of this Board on June 3 does not necessarily put into question his claim of unavailability on a day subsequent to that date. Nonetheless, the hearing officer's inquiry was a reasonable one and Barnett should have provided a responsive explanation. His first answer was discourteous at the very least.<sup>1/</sup> His failure to respond at all the second time bordered on the contumacious. We cannot condone that conduct against an official of this Board. If

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<sup>1/</sup>Instead of providing an explanation, Barnett submitted a frivolous statement. This is not the first instance that Barnett has been uncooperative with the officers of this Board. The Director of Public Employment Practices and Representation has dismissed a charge by Barnett because Barnett refused to cooperate in the processing of his charge by furnishing relevant information. New York City Board of Education (Barnett), 14 PERB ¶4633 (1981).

repeated, this Board will dismiss the charge on grounds of abuse of process. Accordingly, we instruct the hearing officer, after consultation with the parties, to schedule conference and hearing dates for a time certain which will not be adjourned except for extraordinary circumstances.

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ACCORDINGLY, IT IS ORDERED that the hearing officer's decision be reversed, that the charge be reinstated and that the proceedings be remanded for further action in accordance with this decision and Part 204 of our Rules of Procedure.

DATED: December 23, 1982  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member