4-29-1983

State of New York Public Employment Relations Board Decisions from April 29, 1983

New York State Public Employment Relations Board

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Keywords

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of #2A-4/29/83

NIAGARA COUNTY SEWER DISTRICT #1,

Respondent,

-and- CASE NO. U-6120

TEAMSTERS, LOCAL 264,

Charging Party.

FLOYD D. SNYDER, for Respondent

LIPSITZ, GREEN, FAHRINGER, ROLL, SCHULLER & JAMES, ESQS. (STUART M. POHL, ESQ., of Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Niagara County Sewer District #1 (District) to a hearing officer's determination that it violated §209-a.1(a) and (c) by refusing to recommend to the Niagara County Civil Service Commission the upgrading of the positions of Donald Lanternier and Gary Grimaldi in order to chill the organizing efforts of Teamsters, Local 264 (Local 264).

Lanternier and Grimaldi were employed by the District as sewage treatment plant operator trainees (trainees). Before Local 264 commenced its organizing activities, the District had recommended that trainees who had successfully completed their period of training be upgraded to the level of sewage treatment plant operator (operator). Lanternier and Grimaldi were the only trainees who successfully completed their training period

after Local 264 commenced its organizing activities but they were not recommended by the District for upgrading of their positions. The hearing officer determined that the reason the District did not do so was that it wished to discourage the organizing activities by showing that unionization would not help the employees. In reaching this determination, the hearing officer rejected, as pretextual, the explanation of the District that Lanternier and Grimaldi were not recommended for upgrading because the District was not in need of additional operators.

Having reviewed the record, we find that it supports the determination of the hearing officer and we affirm his decision. Lanternier and Grimaldi testified that Nerone, the chief operator and a managerial employee, told them after the selection of Local 264 by the employees that the reason they were not being promoted was that they were "the first casualties for unionizing the personnel." Nerone testified that he did not make any such statement. The hearing officer credited the testimony of Lanternier and Grimaldi, and we accept this conclusion.

We evaluate Nerone's statement in the context of his conduct, acknowledged in his own testimony, of a staff meeting held on January 28, 1982, which he called. At that meeting, which took place during Local 264's organizing campaign, Nerone denied Local 264 the use of meeting room space on District property and of bulletin boards that he had previously given it. He also told staff members that the District was becoming more strict in its sick leave procedures. Moreover, he indicated that the District might shorten the workday by fifteen minutes and pay a meal allowance. We find that Nerone's action on January 29, 1982 demonstrated

animus toward Local 264, and the District's intent to chill the support of the employees for the union. His subsequent statement shows that the District's hostility toward Local 264 continued and supports the finding that it was the reason the District did not recommend the upgrading of the positions of Lanternier and Grimaldi.

NOW, THEREFORE, WE ORDER the District to:

1. Recommend to the Niagara County Civil Service Commission the upgrading of the positions of Lanternier and Grimaldi to Sewage Treatment Plant Operator.
2. Cease and desist from interfering with, restraining, coercing, or discriminating against employees for exercising their Taylor Law rights.
3. Post a copy of the attached Notice to Employees in all places normally used for communication with unit employees.

DATED, April 29, 1983
New York, New York

Ida Klaus

Ida Klaus, Member

David C. Randles

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 employees that the Niagara County Sewer District #1:

1. Will recommend to the Niagara County Civil Service Commission the upgrading of the positions of Donald Lanternier and Gary Grimaldi to Sewage Treatment Plant Operator.

2. Will not interfere with, restrain, coerce, or discriminate against bargaining unit employees for the exercise of rights protected by the Taylor Law.

.....Niagara County Sewer District #1.....
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.

8266

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-4/29/83

In the Matter of

STATE OF NEW YORK (UNIFIED COURT SYSTEM),

Respondent,

CASE NO. U-6064

-and-

ROBERT A. FERRETTE,

Charging Party.

HOWARD A. RUBENSTEIN, ESQ., for Respondent

ROBERT A. FERRETTE, pro se

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Robert A. Ferrette to a hearing officer's decision dismissing his charge against the State of New York (Unified Court System), (Respondent), on the ground that he failed to prosecute the charge. Ferrette's charge alleges that the Respondent first suspended and then dismissed him because he sought election to a union office.

Ferrette also brought an action against the Respondent in federal court and he sought an adjournment of the hearing in the instant case pending the resolution of the court action. The hearing officer refused to grant Ferrette's request for such an indefinite adjournment, but she did grant several of his other requests for adjournment to days certain. Eventually, with Ferrette's consent, she set a hearing for December 29, 1982. On

December 28, 1982, Ferrette advised the Director of Public Employment Practices and Representation that he would not prosecute his charge on the following day because his federal court case had not yet been decided. The hearing officer then dismissed the instant charge.

In support of his exceptions, Ferrette argues that the hearing officer's decision should be reversed because it violates the principle of "federal supremacy" which assertedly requires the postponement of state administrative proceedings until after the federal court has ruled.[1/] We are aware of no such doctrine. The charge before us alleges a violation of §209-a.1 of the Taylor Law. This Board has exclusive jurisdiction to determine those allegations.[2/]

We find that Ferrette failed to exercise his responsibility to prosecute his charge although the hearing officer gave him a reasonable opportunity to do so. Accordingly, we affirm the decision of the hearing officer.

1/ Ferrette also makes several arguments that the hearing officer acted improperly in her conduct of the prehearing conference and that she erred in dismissing various preliminary motions made by him. While these allegations might have relevance to a hearing officer's decision against Ferrette on the merits of his charge, there is no showing that they have any bearing upon the basis of the hearing officer's dismissal of this charge.

2/ Section 205.5(d) of the Taylor Law authorizes this Board to prevent improper practices and provides:

> "The Board shall exercise exclusive non-delegable jurisdiction of the powers granted to it by this paragraph. . ."

See also, City of Albany v. PERB, 57 AD2d 374 (3d Dept., 1977), 10 PERB ¶7012, aff'd 43 NY2d 954 (1978), 11 PERB ¶7007.

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

DATED: April 29, 1983
New York, New York

Ida Klaus, Member

David C. Randles, Member