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New York State Public Employment Relations  
Board (PERB)

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6-1-1983

## State of New York Public Employment Relations Board Decisions from June 1, 1983

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from June 1, 1983

### Keywords

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

### Comments

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of  
CITY OF LONG BEACH,

Respondent,

-and-

CASE NO. U-6461

PATROLMEN'S BENEVOLENT ASSOCIATION OF  
THE CITY OF LONG BEACH, INC.,

Charging Party.

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GUAZZO, SILAGI, CRANER & PERELSON, P.C. (MARK C.  
RUSHFIELD, ESQ., of Counsel), for Respondent

AXELROD, CORNACHIO & FAMIGHETTI, ESQS. (MICHAEL C.  
AXELROD, ESQ, of Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Patrolmen's Benevolent Association of the City of Long Beach, Inc. (PBA) to a hearing officer's decision dismissing its charge that the City of Long Beach (City) violated §209-a.1(d) of the Taylor Law by unilaterally assigning a new job duty to unit employees represented by PBA.

The charge alleges, and the City acknowledges, that on November 4, 1982, during the term of a collective bargaining agreement, the City issued a special order directing superior officers, who are unit employees, "to assume the additional role of sub-registrars." This means that in the absence of the city clerk, police desk officers were given the new assignment of signing permits for the burial or

transportation of cadavers. The City asserts, however, that its action did not constitute a unilateral change of terms or conditions of employment because the matter is covered by the parties' collective bargaining agreement. The hearing officer found this to be so and he dismissed the charge on the ground that the charge merely alleged a contract violation, and, therefore, this Board has no jurisdiction. PBA's exceptions contend that his decision was wrong.<sup>1/</sup>

We find the decision of the hearing officer to be correct. The subject matter of the improper practice charge is fully covered by the parties' collective bargaining agreement.

The agreement incorporates by reference the rules and regulations of the City's Police Department and extends the grievance procedure to breaches of those rules and regulations. Rules 31 through 37 are collectively entitled "Desk Officer" and Rule 33 details the responsibilities of desk officers. Moreover, Section 16 of the parties' collective bargaining agreement extends the grievance procedure to "a claimed assignment of the grievant to duties

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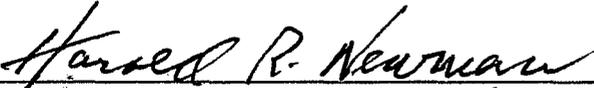
<sup>1/</sup>PBA makes two additional arguments in support of its exceptions. First, it argues that the extra assignments to the desk officers constitute a mandatory subject of negotiation. Second, it argues that the assignments violate the Public Health Law. These arguments are irrelevant to the issue before us, which is solely whether the charge merely alleges a contract violation.

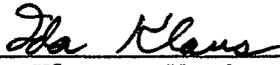
substantially different from those stated in his job title specification." For its part, the City also asserts a contractual basis for its conduct. It points to Rule 5 which authorizes the issuance of special orders regarding matters "necessary for the administration" of the police department.

Having affirmed the hearing officer's finding that the subject matter of the charge is covered by the parties' collective bargaining agreement, we also affirm his conclusion that we are without jurisdiction to consider it.<sup>2/</sup>

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

DATED: June 1, 1983  
Albany, New York

  
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Harold R. Newman, Chairman

  
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Ida Klaus, Member

  
\_\_\_\_\_  
David C. Randles, Member

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<sup>2/</sup>See §205.5(d) of the Taylor Law and St. Lawrence County, 10 PERB ¶3058 (1977).

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

CITY OF NEWBURGH

CASE NO. E-0859

Upon the Application for Designation of  
Persons as Managerial or Confidential.

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CRAIN & RONES, ESQS. (JOSEPH P. RONES, ESQ., of  
Counsel); for Intervenor

WILLIAM KAVANAUGH, ESQ., for Applicant

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Local 589, International Association of Firefighters, AFL-CIO (Local 589), the intervenor herein, to a decision of the Director of Public Employment Practices and Representation (Director) that Deputy Fire Chief Oliver Winstanley is a managerial employee of the City of Newburgh (City) and that Assistant Fire Chief Robert Paden is a confidential employee of the City.<sup>1/</sup> Both Winstanley and Paden are now in a

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<sup>1/</sup>The Director determined that three other assistant fire chiefs employed by the City were neither managerial nor confidential. The City has not filed exceptions to that part of the decision of the Director.

negotiating unit represented by Local 589, and it intervened to preserve their status as employees covered by the Taylor Law.

Winstanley is second in command of the City's Fire Department, which includes over sixty fire fighters and, in the absence of the Fire Chief, he assumes complete responsibility for the Fire Department. His prescribed duties include assistance in the formulation and implementation of Departmental policy. The record does not establish, however, that Winstanley has actually been assigned any managerial functions by the City. The Chief testified that he would have given Winstanley such assignments but for the fact that Winstanley is in the negotiating unit.

The Director determined that Winstanley was a managerial employee because, by virtue of being second in command, he may reasonably be required to perform managerial functions. In its exceptions, Local 589 argues that inasmuch as the Chief was not deterred from making labor relations assignments to Paden, who was also in the unit, it is unreasonable to conclude that the Chief would have assigned managerial duties to Winstanley but for the fact that he is in the negotiating unit.

We affirm the decision of the Director that Winstanley is a managerial employee. By virtue of the fact that

Winstanley is second in command in the department and that the Chief testified that he would have given Winstanley managerial responsibilities but for the fact that he was in the negotiating unit, we find that he may reasonably be assigned such responsibilities. The fact that the Chief has assigned confidential responsibilities to another unit employee, and has not actually assigned managerial functions to Winstanley, does not establish the fact that the City has no need for Winstanley to perform managerial functions. Indeed, the Chief's testimony shows that they did need him to perform such functions. We note, moreover, that an employee may be designated "managerial" on the basis of services that may reasonably be required of him in the future, while an employee may be designated "confidential" only on the basis of services already performed. City of Binghamton, 12 PERB ¶3099 (1979).

Paden, who was designated confidential, has been a staff assistant to the fire chief for 15 months. In that capacity, he has been consulted by the chief on a variety of subjects including personnel and negotiation matters. The record shows that before negotiations commenced, the chief sought Paden's advice regarding the negotiation posture that he should take and after negotiations commenced, he asked Paden to evaluate Local 589's proposals. On the basis of

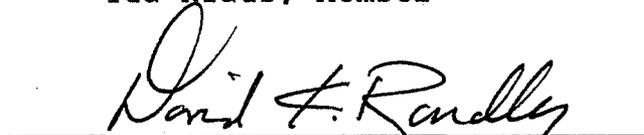
this record evidence, we affirm the decision of the Director that Paden is confidential.

NOW, THEREFORE, WE ORDER that the application of the City to designate Oliver Winstanley as managerial and Robert Paden as confidential be, and it hereby is, granted.

DATED: May 31, 1983  
Albany, New York

  
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Harold R. Newman, Chairman

  
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Ida Klaus, Member

  
\_\_\_\_\_  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

VILLAGE OF NORTH TARRYTOWN,

Employer,

-and-

CASE NO. C-2511

LOCAL 456, INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS OF AMERICA,

Petitioner,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION,  
INC., WESTCHESTER LOCAL 860,

Intervenor.

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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 456, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America 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.

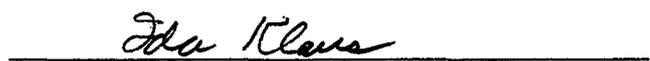
Unit:        Included:        Caretaker, Auto Mechanic,  
Assistant Auto Mechanic, Assistant  
Road Maintenance Foreman, Heavy  
Motor Equipment Operator, Skilled  
Laborer, Laborer, Maintenance  
Mechanic Repairs, Assistant  
Foreman Sanitation, Sanitation  
Man, Motor Equipment Operator  
Sanitation, Water Treatment Plant  
Operator Type Gr. II B, Water &  
Sewer Maintenance Man Gr. II,  
Sewer Treatment Plant Operator  
Type III B, Assistant Water  
Maintenance Foreman.

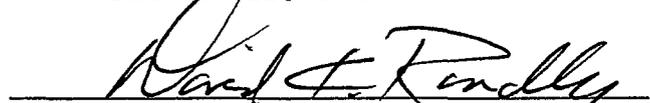
Excluded:        All other titles.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 456, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED:    June 1, 1983  
          Albany, New York

  
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Harold R. Newman, Chairman

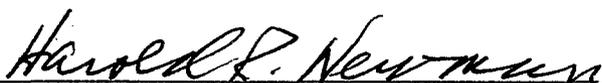
  
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Ida Klaus, Member

  
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David C. Randles, Member

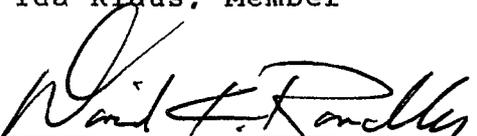


Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Oceanside Federation of Teachers, AFT, Local 1631, NYSUT, AFL-CIO and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: June 1, 1983  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

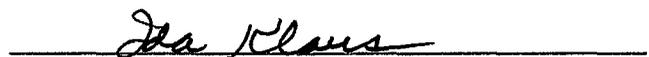
  
David C. Randles, Member

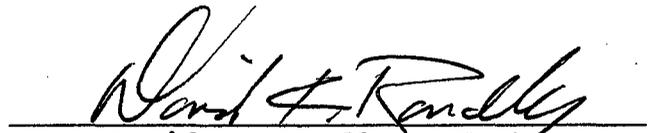


Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Albany Permanent Professional Fire Fighters Association, AFL-CIO and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: June 1, 1983  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member