State of New York Public Employment Relations Board Decisions from June 16, 1983

New York State Public Employment Relations Board

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CITY SCHOOL DISTRICT OF THE CITY OF
CORNING,

Respondent,

-and-

CORNING TEACHERS ASSOCIATION, NYSUT,
AFT, AFL-CIO, LOCAL 2589,

Charging Party.

HOGAN & SARZYNISKI, ESQ., for Respondent

PAUL S. MAYO, for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the City
School District of the City of Corning (District) to a
hearing officer's decision that it violated §209-a.1(d) of
the Taylor Law by unilaterally changing the insurance carrier
and claim administrator of its medical and dental insurance
plan.

The 1979-82 collective bargaining agreement between the
District and Corning Teachers Association, NYSUT, AFT,
AFL-CIO, Local 2589 (Local 2589) provided that the medical
and dental plans would meet certain "Blue Cross/Blue Shield"
benefit specifications, but it did not name an insurance carrier or administrator. Until July 1, 1982, the District purchased the insurance from Blue Cross/Blue Shield, but on May 13, 1982, it notified Blue Cross/Blue Shield that the group insurance policies would be cancelled effective July 1, 1982, the day after the collective bargaining agreement was to expire. In its place the District set up a self-insurance program which is administered by Health Care Administrative Services of New York, Inc. (HASNY). The District also insured itself against catastrophic loss in the event of excessive claims.

Although the District was in negotiation with Local 2589 for a successor agreement when it cancelled the Blue Cross/Blue Shield coverage, it did not notify the Local about the change. The Local discovered the change in early June when new insurance forms were circulated among the unit employees. It then filed the charge herein.

1/ The agreement provided that the "health insurance plan will meet the specifications of the Blue Cross 360-Day plan and the Blue Shield UCRI plan with the following riders . . . ." It further provided that "the District will provide a dental plan that will meet the specifications of the Blue Cross/Blue Shield Option II . . . ."
The hearing officer found that the conversion rights under the new plan were not as attractive as under the old plan and that the reimbursement rate for one dental procedure had been diminished. He also found unit employees were disadvantaged by changes in the administrative procedures involved in the filing of claims and receipt of payments. He concluded that the District had violated §209-a.1(d) of the Taylor Law by changing to a self-funded plan under a new administrator unilaterally and he ordered the District to reinstate the Blue Cross/Blue Shield program.

The primary thrust of the exceptions is that the hearing officer rejected the District's argument that the improper practice charge merely alleges a violation of a collective bargaining agreement and is therefore not within this Board's jurisdiction. Whether or not the change was in conformity with the agreement is, according to the District, subject only to the arbitration procedures provided by that agreement. The basis of this argument is that an agreement was in effect on May 13, 1982, when the District cancelled the Blue Cross/Blue Shield policy. Moreover, the District asserts a contractual right to make the change in that the contract did not require a Blue Cross/Blue Shield policy, but merely called for insurance coverage that would meet Blue Cross/Blue Shield benefit specifications.
In rejecting this argument, the hearing officer determined that, although Blue Cross/Blue Shield was notified on May 13, 1982 that the insurance policies would be cancelled, the act of cancellation took effect on July 1, 1982, after the expiration of the collective bargaining agreement. Accordingly, he reasoned, no agreement could have been violated by the cancellation; the only violation that could have occurred would be of the Taylor Law requirement that the District not change existing terms and conditions of employment while under a duty to negotiate a successor agreement. Accordingly, the hearing officer concluded that the alleged violation is subject to the jurisdiction of this Board. We affirm the conclusion of the hearing officer. 2/

The District further argues that, in any event, there was no substantial change because the benefit and other differences between the two health programs are de minimis. Conceding that the conversion features and one dental benefit of the former plan are superior to the comparable features of the new plan, it contends that the benefit and protection differences that flow from its administrative procedures are

as good as those that flow from the administrative procedures of Blue Cross/Blue Shield. Therefore, it asserts, if the Board has jurisdiction, we should order the District to provide conversion features and a dental benefit schedule comparable to those of the Blue Cross/Blue Shield policies, but not direct the reinstatement of those policies.

Having reviewed the record, we determine that the benefit and protection differences between the two programs are significant and that the District's unilateral change in the kind and level of benefits enjoyed by the unit employees disadvantages unit employees. Moreover, not only changes in conversion rights and the dental benefit schedule but also the differences in the administrative practices of Blue Cross/Blue Shield and HASNY disadvantage them. For example, Blue Cross/Blue Shield has contracted with various physicians, dentists and hospitals who have agreed to accept the Blue Cross/Blue Shield compensation rates as full payment for services rendered. Lists of these were then compiled by Blue Cross/Blue Shield and distributed to covered employees.

Although, with one exception, the current compensation rates are the same as those provided by Blue Cross/Blue Shield, no physicians, dentists and hospitals have obligated themselves to accept those rates in full payment of services rendered to HASNY covered employees. If the normal charge of
a physician, dentist or hospital is more than it has agreed to accept from Blue Cross/Blue Shield, a person covered by HASNY may have to make up the difference himself. Furthermore, even if some physicians and dentists accept the HASNY compensation rates in full payment for services rendered, HASNY-covered employees have no way of knowing in advance which do so. Without lists comparable to those distributed by Blue Cross/Blue Shield, HASNY-covered employees must make inquiries on their own at a time when illness may make it inconvenient for them to do so.

Accordingly, the District failed to afford these employees the benefits that meet the specifications of the Blue Cross/Blue Shield program. We therefore determine that the District violated §209-a.1(d) of the Taylor Law.

NOW, THEREFORE, WE ORDER the District to:

1. Provide health and dental insurance coverage to unit employees which meet the specifications of the insurance program in effect before July 1, 1982; and
2. Sign and post a notice in the form attached at all locations normally used for communications to the unit employees.

DATED: June 16, 1983
Albany, New York

Harold R. Newman, Chairman
Ida Klaus, Member
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 in the unit represented by the Corning Teachers Association, NYSUT, AFT, AFL-CIO, Local 2589 that the City School District of the City of Corning will:

1. provide health and dental insurance coverage to unit employees which meet the specifications of the insurance program in effect before July 1, 1982.

City School District of the City of Corning

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.
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CITY OF SARATOGA SPRINGS,

Respondent,

-and-

SARATOGA SPRINGS FIREFIGHTERS, LOCAL 343, IAFF, AFL-CIO.

Charging Party.

GRASSO AND GRASSO, ESQS., for Charging Party
JOSEPH T. KELLY, for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Saratoga Springs Firefighters, Local 343, IAFF, AFL-CIO (Local 343) to a hearing officer's decision dismissing its charge that the City of Saratoga Springs (City) violated §209-a.1(d) of the Taylor Law by refusing to negotiate in good faith with respect to nine demands that it made during collective negotiations. The City acknowledged its refusal to negotiate the demands, but it argued that they did not constitute mandatory subjects of negotiation.\(^1\) The hearing officer found merit in this defense. Local 343 also

\(^1\)In addition to the issues raised by Local 343's exceptions, the hearing officer found some other demands to be nonmandatory subjects of negotiation, and still others to be mandatory. There are no questions regarding those parts of the hearing officer's decision before us.
complains that the hearing officer improperly received a document in evidence.

The first of the demands which, according to Local 343, the hearing officer erroneously determined to be nonmandatory concerns management responsibilities regarding equal opportunity.²/ The hearing officer determined that the demand was nonmandatory because it merely restates protections contained in the constitution and civil rights statutes. Local 343 responds that the proposed protections go beyond those dealing with ethnic and labor relations discrimination and include "political favoritism which the Civil Service Law was designed to prohibit." Nevertheless, the demand merely restates statutory rights and is, therefore, not a mandatory subject of negotiation.

²/The demand states: "It is agreed by the City, the Department and the Union that the City is obligated, legally and morally, to provide equality of opportunity, consideration and treatment of all members of the Department and to establish policies and regulations that will insure such equality of opportunity, consideration, and treatment of all regularly appointed members employed by the Saratoga Springs Fire Department of the Department of Public Safety of the City of Saratoga Springs in all phases of the employment process, and to all benefits of the Civil Service Laws and rules and regulations of the State of New York." (emphasis supplied)
The second demand in question paraphrases the Taylor Law prohibition of improper employer practices and the hearing officer found it nonmandatory for that reason. Local 343 argues that the demand goes beyond the law in that it requires the employer "to meet, . . . or confer on proper matters . . . upon proper and reasonable notice." It contends that the law merely requires the City to negotiate upon the expiration of a contract, while the demand requires discussions during the life of a contract.

Local 343 misreads the duty to negotiate, which is specified in §204.3 of the Taylor Law. That duty includes an obligation to meet and confer with respect to questions arising under an agreement. We therefore affirm the decision of the hearing officer that this demand is nonmandatory.

3/ The demand states: "No official or agent of the City of Saratoga Springs shall:

(1) Initiate, create, dominate, contribute to or interfere with the formation or administration of any employee organization meeting the requirements of law.

(2) Discriminate in regard to employment or conditions of employment in order to encourage or discourage membership in a labor organization.

(3) Discriminate against an employee because he has given testimony or taken part in any grievance procedures or other hearings, negotiations or conference as part of the labor organization recognized under the terms of this agreement; or

(4) Refuse to meet, negotiate or confer on proper matters with representatives of the Union as set forth in this Agreement, upon proper and reasonable notice." (emphasis supplied)
The third demand at issue deals with polygraph tests. It provides that, with specified exceptions, unit employees shall not be subjected to polygraph tests "for any reason" in an "investigation by superior officers designated by the fire chief or the commissioner of public safety." The hearing officer determined that the words "for any reason" took the demand beyond investigations of departmental misconduct, and he held that it was therefore not mandatory.

Local 343 asserts in its exceptions that by its terms the demand deals with internal investigations relating to departmental misconduct. Moreover, it states that this is the sole purpose of the demand. As clarified by Local 343, the demand is a mandatory

4/ The demand states: "The wide ranging powers and duties given to the Department and its members involve them in all manner of contacts and relationships with the public. Out of these contacts may come questions concerning the actions of members of the Department. These questions often require immediate investigation by superior officers designated by the Fire Chief or the Commissioner of Public Safety. In an effort to ensure that these investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:...No member shall be ordered or asked to submit to a Polygraph (lie detector) test for any reason as long as Polygraph tests are not admitted without consent of the person charged into evidence by Courts of Record in Civil or Criminal proceedings in this state. Such tests may be given if requested by the member." (emphasis supplied)
subject of negotiation.\footnote{5}{See \textit{Buffalo PBA v. Helsby}, no official report, 9 PERB ¶7020 (Sup. Ct. Erie Co., 1976); \textit{Troy Uniformed Firefighters}, 10 PERB ¶3015 (1977).}

The fourth demand before us provides that during an investigation, unit employees shall not "be subjected to any offensive language" or threatened with dismissal.\footnote{6}{The demand states, "The member of the Department shall not, during any interrogation, be subjected to any offensive language, nor shall he be threatened with dismissal or other disciplinary punishment. No promise of reward shall be made as an inducement to answering questions." (emphasis supplied)} Focusing on the language prohibiting the threat of dismissal, the hearing officer determined that this demand merely restates existing law. However, we note that the prohibition against subjecting unit employees to offensive language goes beyond the protection contained in any statute, and that the additional protection deal with terms and conditions of employment. Accordingly, we find this demand to be a mandatory subject of negotiation.

The fifth demand at issue would require the City to recall off-duty firefighters and to pay them, whether used or not, whenever it invokes the mutual

\footnote{5}{See \textit{Buffalo PBA v. Helsby}, no official report, 9 PERB ¶7020 (Sup. Ct. Erie Co., 1976); \textit{Troy Uniformed Firefighters}, 10 PERB ¶3015 (1977).}

\footnote{6}{The demand states, "The member of the Department shall not, during any interrogation, be subjected to any offensive language, nor shall he be threatened with dismissal or other disciplinary punishment. No promise of reward shall be made as an inducement to answering questions." (emphasis supplied)}
The hearing officer determined that the City cannot be compelled to recall firefighters. Local 343 argues that the demand is mandatory because the utilization of the mutual aid program must be seen as a variation of subcontracting and that the demand is therefore merely designed to provide overtime compensation to unit employees. We affirm the decision of the hearing officer. In *Hudson Falls Permanent Firefighters*, 14 PERB ¶3021 (1981), we held it to be a management prerogative to decide whether or not to call in off-duty firefighters during an emergency, and in *Local 589, IAFF*, 16 PERB ¶3030 (1983), we held that the invocation of mutual aid among firefighting companies of neighboring communities does not constitute subcontracting.

The sixth demand presented to us provides "newly created and vacant positions shall be filled . . . immediately". The hearing officer ruled that it is a management prerogative to determine whether or not it needs to fill vacant positions. Local 343 argues that

2/The demand states, "The employer recognizes its obligation to utilize the services of its own Fire Fighter even when outside assistance under the Mutual Aid Program may be necessary. The City will therefore develop a plan for the re-call of off-duty Fire Fighters simultaneously with any Mutual Aid Call, and the parties will do their utmost to see that such plan is made effective. Any employee who is recalled under such a plan shall be paid for his time whether or not his services are utilized."
the demand would not interfere with the management prerogative in that the City is always free to eliminate the vacant positions. In accordance with our decision in Hudson Falls Permanent Firefighters, 14 PERB ¶3021 (1981), we affirm the decision of the the hearing officer.

The seventh demand before us would prohibit the City from using volunteers to replace firefighters who are on temporary or permanent leave. The hearing officer determined that this demand would interfere with the management prerogative of determining the nature and level of services to be provided. We agree. The demand would prevent the City from utilizing the services of volunteers in emergency situations. This would impose a restriction upon the services that the City may choose to render to its constituency and is, therefore, not a mandatory subject of negotiation.

9/ The demand states: "For the period covered by this agreement the City agrees that no permanent member of the Department who leaves the service may be replaced by a volunteer, nor will the City employ the services of volunteers to replace permanent employees who are on leave of absence, ill, or disabled even on a temporary basis."

9/ The demand was presented as an inseparable unit. As one part of it is nonmandatory, we need not consider the rest of the demand. Pearl River UFSD, 11 PERB ¶3085 (1978); Town of Haverstraw, 11 PERB ¶3109 (1978).
The eighth demand presented to us by the exceptions deals with the reliability of equipment for safety purposes and provides for a procedure whereby complaints can be made to platoon commanders, who are unit employees, who "shall have effective authority to remedy the situation by withdrawal of the equipment from use . . ."¹⁰ The hearing officer found the demand to be nonmandatory because it would give unit employees veto power over equipment selected by the City.

Local 343 argues that the responsibilities of the platoon commander are irrelevant in that the fire chief

¹⁰The demand states:

The Safety Committee shall be free to inspect any equipment used in the fighting of fires or other work of the Department, and advise the Chief of any faulty equipment found. Any fire fighter or the Safety Committee may call to the attention of the platoon commander in charge the fact that certain equipment may be dangerous to use, and the Commander shall have effective authority to remedy the situation by withdrawal of the equipment from use or arranging for its immediate repair. If the platoon commander refuses to take the necessary steps to remedy the situation, he must notify the Safety Committee of his decision within twelve (12) hours after the matter is brought to his attention, in which event the matter shall be laid before the Fire Chief. If the Chief agrees with platoon commander, he must so advise the committee within two (2) working days and the Union may then present the dispute to the Commissioner of Public Safety. Rejection by the Commissioner will permit commencement of the arbitration procedure provided in Article VI of this agreement.

Provided however, that nothing herein contained shall require an employee to endanger his life because of faulty equipment. (emphasis supplied)
"has the final say in decisions about the use of equipment." We find that the demand would take that responsibility away from the chief and give it to unit employees. Accordingly, it is not a mandatory subject of negotiation.  

The last demand at issue would relieve firefighters from the performance of various functions including snow removal around the fire house. In Fairview Professional Firefighters Association, 12 PERB ¶3083 (1979), we determined that many of the job duties referred to in this demand, other than snow removal, were not the inherent work of firefighters and, therefore, their performance was a mandatory subject of negotiation. The hearing officer determined that snow removal, however, is an inherent job duty of firefighters in that it is necessary to assure that the fire equipment can be taken out on the street.

In its response, Local 343 does not address this determination, but merely asserts that the job duties

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12/The demand states: "Members shall not be required to do any painting, carpentry, plumbing, electrical, heating or mechanical work. Members shall not be required to do any work to the exterior of the fire department buildings nor shall they be required to maintain the grounds or remove snow from around said buildings." (emphasis supplied)
referred to in the demand are not the inherent work of firefighters. Were the demand limited to snow removal of walkways and other areas not affecting the ability to put equipment on the street, it might be a mandatory subject of negotiation. However, Local 343 does not so limit its demand and we therefore find that it goes to the ability of firefighters to fight fires, and is not a mandatory subject of negotiation.\(^{13/}\)

NOW, THEREFORE, WE CONCLUDE that the City has violated §209-a.1(d) of the Taylor Law by refusing to negotiate in good faith with respect to those items above, determined to be mandatory subjects of negotiation, and we order it to negotiate those demands in good faith.

\(^{13/}\)Apart from its objection to specific determinations of the hearing officer, Local 343 also complains that, in connection with this last demand, the hearing officer improperly had before him respondent's Exhibit 2, which is a duty statement of firefighters. The exhibit was attached to respondent's brief to the hearing officer. The duty statement, which relates to the last demand, was not relied upon by the hearing officer. In any event, the duty statement is irrelevant to our determination that the demand is nonmandatory. We therefore dismiss this exception.
In all other respects, we order that the charge herein be, and it hereby is, dismissed.

DATED: June 16, 1983
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COBLESKILL CENTRAL SCHOOL DISTRICT,
Respondent,

-and-

COBLESKILL TEACHERS ASSOCIATION,
Charging Party.

W. LAWRENCE BELLCOURT, ESQ., for Respondent

ROBERT D. CLEARFIELD, ESQ. (JANET AXELROD, ESQ.,
of Counsel), for Charging Party

BOARD DECISION AND ORDER

The charge herein was brought by the Cobleskill Teachers
Association (Association). It alleges that it had an
agreement with the Cobleskill Central School District
(District) which expired on June 30, 1982, and which
contained a salary schedule that related teachers' salaries
to the number of years of service and to the extent of their
academic achievement. 1/ It further alleges that no
successor agreement had been negotiated as of the opening of
school in September 1982, and that the District, at that
time, failed to pay salaries in accordance with the terms of
the expired agreement. Noting that §209-a.1(e), which became

1/Appendix A, attached to this decision, is the
salary schedule contained in Article IV of the contract.
effective on July 29, 1982, provides, in pertinent part, that
"[i]t shall be an improper practice for a public employer or
its agents deliberately . . . to refuse to continue all the
terms of an expired agreement until a new agreement is
negotiated . . .", the charge complained that the District
improperly refused to continue the terms of the expired
agreement.

The hearing officer found a violation as charged, and
the matter now comes to us on the exceptions of the
District. While the exceptions refer to thirteen
statements in the hearing officer's decision which the
District deems to be in error, they raise three essential
questions. These are: First, did the District refuse to
continue the terms of the expired agreement when, in
September 1982, it refused to pay salary increments based
upon years of service? Second, does the newly enacted
§209-a.1(e) require the District to pay salary increments
based upon years of service? Third, did the hearing officer
apply §209-a.1(e) retroactively in determining that the
District's conduct was improper? We consider each of these
questions in the order stated.

^2/Briefs amicus curiae in support of the exceptions
were filed by the New York State School Boards Association
and by attorneys representing various school districts.
By its terms, the agreement negotiated by the Association and the District provided a salary schedule of progressive salary advancement for increased years of teaching service. Under the agreement, as the teachers accrued an additional year of service, they received a service increment which moved them to a higher salary level. Thus, for example, a teacher reaching his seventh year of employment received a $414-dollar increase over what he was paid in his sixth year. When school opened in September 1982, however, the District did not apply the salary schedule in accordance with its terms and teachers were not moved up the salary schedule by reason of their added service. Thus, a teacher in his seventh year of employment did not receive the $414 dollars but was paid as if he were still in his sixth year of employment.

The District argues that the salary schedule was merely designed to provide a basis for calculating salary levels applicable during the term of the agreement and was not intended to survive the agreement. It bases this argument upon evidence of a past practice in the District of not always paying seniority-related increments after the expiration of past contracts.

This argument of the District is misplaced. The issue before us is not whether there was a past practice of paying increments that survives the expiration of the parties'
agreement as part of the status quo to be maintained until a successor agreement is negotiated. Here we are dealing with the express terms of an expired agreement, all the terms of which the District is required to continue until a successor agreement is negotiated. That agreement specifies the payment of salary to unit employees based upon their years of teaching service. It does not contain any language indicating that the parties intended the salary schedule to be treated differently from other provisions of the agreement after its expiration. It is thus clear that when, upon the opening of school in September 1982, the District did not pay the progressive salaries for additional service specified in the agreement, it failed to continue those particular terms of the agreement.

The second argument raised by the District's exceptions is that §209-a.1(e) does not require it to pay salary increments based upon years of service. The District relies upon Rockland County BOCES v. PERB, 41 NY2d 753 (1977), PERB ¶7010, in which the Court of Appeals ruled that, for policy reasons, after the expiration of an agreement, a public employer's obligation to maintain the status quo during negotiations for a successor agreement does not include a duty to pay increments that would have been required under the expired agreement. The plain answer to this argument is that the language of the new statute, which requires "all terms" of the expired contract to be continued,
has made Rockland County BOCES inapplicable to increments specified in an expired contract.

That this is the effect of the new statute is clearly indicated in the opinion of the Court of Appeals in Maplewood-Colonie Common School District v. Maplewood Teachers Association, 57 NY2d 1025 (1982), 15 PERB ¶7538, decided after the new statute became law. In holding that a public employer must pay seniority-based increments pursuant to the terms of an expired agreement, the Court of Appeals reversed a decision of the Third Department (85 AD2d 764 [1981], 15 PERB ¶7516), rendered before passage of the new statute, which held that the public policy expressed in Rockland County BOCES precluded the application of the continuation of benefits clause to salary increments. Rejecting this holding, the Court of Appeals found that the new statute declared a contrary public policy. Thus, the Court of Appeals decided that the legislature had changed the prior public policy declared in Rockland County BOCES as to the duty to continue to pay service-related increments after the expiration of an agreement. The reasoning of the Court's opinion makes manifest that the new statute reversed the prior public policy regardless of whether or not the expired agreement contained a continuation of benefits clause.

Having found that the District refused to continue the terms of an expired agreement, we now reach the question whether the hearing officer's determination that the refusal
was improper constituted a retroactive application of the new statute. The question arises because of the time sequence of the events in this case. The agreement that contained the salary schedule expired on June 30, 1982. The District's refusal to abide by the salary schedule occurred in September 1982. Section 209-a.1(e) of the Taylor Law took effect during the interim between these two events, on July 29, 1982.

Agreeing with the hearing officer, we determine that the statute covered the conduct of the District. To understand the nature of the District's obligation under the new statute, it is necessary to look closely at the language of the new improper practice. It expresses for the first time a statutory policy governing a public employer's conduct during the interim, or hiatus period, between collective bargaining agreements. The statute does not extend the life of the expired agreement; it declares that the obligation created by that agreement must, however, continue to apply during that interim. Thus, any obligation of the employer that would have become operative at a particular time during the life of the expired agreement must now apply upon the advent of such particular time during the hiatus period. For purposes of determining whether a violation occurred, the time when the agreement expired is therefore not significant. What is significant is the particular time when the public employer refused to continue its terms.
In the instant case, the refusal took place in September 1982, after the effective date of the statute. At that particular time the District would have been obligated under the salary schedule of the expired agreement to increase the salaries of its teachers for accrued service. The statute effectively imposed that obligation upon the District prospectively after the expiration of the agreement and before the negotiation of a successor.

Accordingly, the hearing officer's determination that the District violated §209-a.1(e) of the Taylor Law did not involve a retroactive application of the statute and we affirm his finding.

NOW, THEREFORE, WE ORDER the District:

1. to cease and desist from refusing to pay unit employees in accordance with the salary schedule contained in an expired agreement until a successor agreement is negotiated;³ and

³/No affirmative relief is required. The parties have reached an agreement since the hearing officer's decision was issued. The retroactive salary payments required by that agreement will compensate the unit employees for loss suffered by reason of the violation found.

8347
2. to sign and post a notice in the form attached at all places ordinarily used for communications to unit employees.

DATED: June 16, 1983
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member
### ARTICLE IV

**SALARIES AND PROFESSIONAL COMPENSATION**

A. The following schedule shall be in effect for the 1981-82 school year.

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Teachers completing one year of service at Levels 1-13 and 15-18 of the 1980-81 salary schedule shall advance one level to the 1981-82 salary schedule. Conditions pursuant to Level 15 follow:

**Level 15** - Advancement to Level 15 requires that a teacher must:

a. have been on Level 14 for at least one year.

b. have completed six (6) hours of approved study within the past ten (10) years.

**Level 19** - Teachers having completed one year of service at Level 19 will advance to Level 19a.
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 in the unit represented by the Cobleskill Teachers Association that the Cobleskill Central School District:

Will not refuse to pay unit employees in accordance with the salary schedule contained in an expired agreement until a successor agreement is negotiated.

Cobleskill Central School District

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.
In the Matter of
MANCHESTER-SHORTSVILLE CENTRAL
SCHOOL DISTRICT

Upon the Application for Designation of
Persons as Managerial or Confidential

STANTON & VANDER BYL, ESQS. (WAYNE A. VANDER BYL,
ESQ., of Counsel), for Manchester-Shortsville
Central School District

HINMAN, STRAUB, PIGORS & MANNING, P.C. (BARTLEY J.
COSTELLO, III, ESQ., of Counsel), for the Red
Jacket Administrators' Association

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of James
Boyle and Dominic Carra to a determination of the Director
of Public Employment Practices and Representation
(Director) that they are managerial employees. Boyle and
Carra are principals of the District's only secondary and
only elementary school respectively. Together they
constitute the administrators' unit and together with the
superintendent they constitute the District's only
educational administrators.

Before October 1981, when the Red Jacket
Administrators' Association was recognized as the
representative of Boyle and Carra, they regularly attended
executive sessions of the Board of Education. The record
shows that personnel matters were considered at these sessions, particularly teacher discipline. While they have not attended executive sessions of the Board of Education since the Administrators' Association was recognized as their representative, the Director determined that they may reasonably be required to do so. This, according to the Director, is a sufficient basis for granting the District's application. The Director found further support for his decision in the fact that both Boyle and Carra have acted on behalf of the superintendent during brief periods when he attended to business outside the District and Boyle did so for an extended period when the superintendent was ill.

In support of its exceptions, Boyle and Carra argue that they are no more than high level supervisors such as the principals who were determined not to be managerial employees in Hempstead, 6 PERB ¶3001 (1973), aff'd 42 AD2d 1056 (3rd Dept.), 6 PERB ¶7012 (1973), aff'd 35 NY 877, 7 PERB ¶7024 (1974). We find, however, that Hempstead is not applicable because, unlike the principals there, Boyle and Carra had functioned as managerial employees in the past, and they are the sole educational administrators other than the Superintendent. The Director's conclusion that they may reasonably be required to perform managerial functions is therefore particularly persuasive. Accordingly, we affirm his determination that they meet the criteria for
designation as managerial set forth in §201.7(a) of the Taylor Law.¹/

NOW, THEREFORE, WE ORDER that the application of the District to designate James Boyle and Dominic Carra as managerial employees be, and it hereby is, granted.

DATED: June 16, 1983
Albany, New York

[Signatures]

¹/See City of Newburgh, 16 PERB ¶3053 (1983).
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
COUNTY OF ALBANY,
Employer.

-and-

ALBANY COUNTY PROBATION EMPLOYEES ASSOCIATION.
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 Albany County Probation Employees 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.

Unit: Included: Probation Assistant, Probation Officer Trainee, Probation Officer, Senior Probation Officer and Probation Supervisor.

Excluded: All other employees.
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Albany County Probation Employees Association 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 16, 1983
Albany, New York

Harold R. Newman, Chairman
Ida Klaus, Member
David C. Randles, Member