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New York State Public Employment Relations  
Board (PERB)

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7-13-1983

## State of New York Public Employment Relations Board Decisions from July 13, 1983

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from July 13, 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

ROTTERDAM-MOHONASEN CENTRAL SCHOOL  
DISTRICT,

Respondent,

-and-

CASE NO. U-6674

MOHONASEN TEACHERS ASSOCIATION,  
NYSUT, AFT, AFL-CIO,

Charging Party.

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PEMBERTON, BUCHYN & O'HARE, ESQS. (JOSEPH BUCHYN,  
ESQ., of Counsel), for Respondent

RUBY P. NICHOLSON, for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Rotterdam-Mohonasen Central School District (District) to a decision of a hearing officer that it violated §209-a.1(d) of the Taylor Law by refusing a demand of the Mohonasen Teachers Association, NYSUT, AFT, AFL-CIO (Association) to

negotiate the impact of its decision to increase the student contact hours of two physical education teachers.

The hearing officer issued his decision, without holding a hearing. He had indicated to the parties that no hearing would be held unless an offer of proof of additional facts beyond those submitted to him at an earlier conference was submitted. He thereafter concluded that the offer of proof by the District did not warrant the holding of a hearing. Among the exceptions of the District to the hearing officer's decision is the assertion that the hearing officer erred in denying it a hearing because there were facts in dispute.

In addition, the District urges in its exceptions that the conduct complained of did not involve a unilateral change in terms and conditions of employment and therefore the impact of that decision need not be negotiated. The District also argues that the hearing officer erred in not finding that a provision of the parties' agreement constitutes a waiver by the Association of mid-contract negotiations on impact matters.

We are unable to make a proper determination of the issues involved in this charge on the present record. A full hearing on the charge should be held.

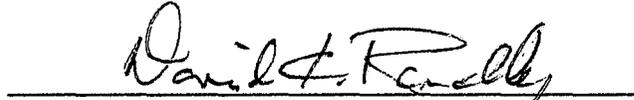
ACCORDINGLY, WE ORDER that the matter be remanded to the

hearing officer for a hearing on the charge and a subsequent report based upon the record made at such hearing.

DATED: ~~July 13, 1983~~  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

UNITED UNIVERSITY PROFESSIONS, INC.,  
NEW YORK STATE UNITED TEACHERS, and  
AMERICAN FEDERATION OF TEACHERS,

Respondent,

-and-

CASE NO. U-6263

THOMAS C. BARRY,

Charging Party.

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BERNARD F. ASHE, ESQ. (IVOR R. MOSKOWITZ, ESQ., of  
Counsel), for Respondent

THOMAS C. BARRY, pro se

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Thomas C. Barry to the decision of a hearing officer dismissing his charge that United University Professions, Inc. (UUP) does not have a proper agency shop fee refund procedure in that

the final appellate step of the refund procedure does not cover the portion of agency shop fees transmitted to UUP's affiliates, New York State United Teachers (NYSUT) and American Federation of Teachers (AFT)<sup>1/</sup>

Barry made four allegations in support of his charge relating to the lack of review of the affiliates' share of the agency shop fees. Three of those allegations are supported by the record: Between 60 and 70% of the agency shop monies received by UUP go to NYSUT and AFT; neither NYSUT nor AFT has a refund procedure; the final appellate step of the UUP's refund procedure is a determination by a neutral.

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<sup>1/</sup>At an earlier stage of this proceeding, the Director of Public Employment Practices and Representation (Director) dismissed Barry's charge against UUP on the ground that it failed to set forth a prima facie case. Upon review, we determined that to the extent that the charge alleged that the refund procedure insulates the portion of the agency shop fee transmitted to the affiliates from the review by the neutral, the charge stated a prima facie case. We agreed with the Director that two other aspects of the charge did not set forth a prima facie case. We remanded the matter for a determination whether the facts support that part of the charge sustained by us. The decision of the hearing officer herein, upon remand, concludes that they do not.

Barry's fourth allegation is that the neutral review is limited to agency shop fee monies retained by UUP and does not extend to monies transmitted to NYSUT and AFT. The hearing officer has determined that the fourth allegation is not sustained. The only evidence in support of that allegation is a statement contained in the decision of the neutral designated under the UUP procedure to determine the amount of the refund due from UUP to agency shop fee payers for 1977-78 agency shop fee payments. He interpreted the submission to him to mean that: "I should not go behind the representations of NYSUT and AFT with respect to the amount of refund due from the expenditures of each organization."

While this statement by itself might indicate that the agency shop fee monies sent by UUP to NYSUT and AFT have been insulated from any review by the neutral, the record of proceedings before the neutral actually shows a contrary view on his part. Thus, he noted that the financial reports of NYSUT and AFT, which were made part of the record before him, included financial information regarding the expenditures of NYSUT and AFT.<sup>2/</sup> Moreover, he made clear that UUP's

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<sup>2/</sup>This is the same kind of information as we require an employee organization to furnish to employees along with their agency shop fee refunds. Hampton Bays Teachers Assn., 14 PERB ¶3018 (1981).

burden of establishing the correctness of the total refund extended to the amounts due from NYSUT and AFT.

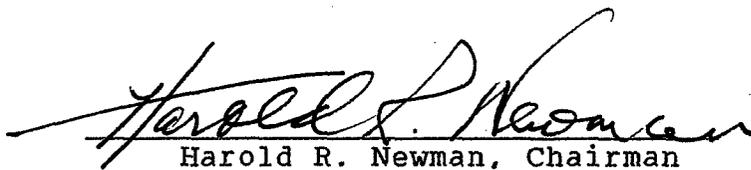
In further support of his exceptions, Barry also relies upon statements contained in the decision of the neutral designated to determine the amount of the refund due to agency shop fee payers for 1978-79 agency shop fee payments. The record of that proceeding shows that the neutral defined the issue before him as including review of the affiliates' expenditures as well as that of UUP. The record also shows that UUP recognized that it had to submit to the neutral the financial reports prepared by NYSUT and AFT.

We are accordingly satisfied that the neutrals were not barred by UUP from reviewing the expenditures of the affiliates and that the neutrals took evidence in relation thereto. Barry, in his exceptions, appears to argue that the neutrals did not have sufficient evidence before them to support their decisions and that UUP did not provide them with satisfactory evidence. This objection is beyond our jurisdiction to consider since it goes to the merits of the neutrals' decisions. Hampton Bays Teachers Assn., supra.

Accordingly, we affirm the findings and conclusions of the hearing officer.

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

DATED: July 13, 1983  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of  
BUFFALO MUNICIPAL HOUSING AUTHORITY,  
Employer,

-and-

CASE NO. C-2625

CIVIL SERVICE EMPLOYEES ASSOCIATION,  
INC., LOCAL 1000, AFSCME, AFL-CIO,  
Petitioner,

-and-

BUFFALO HOUSING AUTHORITY SECURITY  
OFFICERS BENEVOLENT ASSOCIATION,  
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 the Civil Service Employees Association, Inc., 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.



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of  
BAY SHORE UNION FREE SCHOOL DISTRICT  
Employer.

-and-

CASE NO. C-2591

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BAY SHORE CLASSROOM TEACHERS ASSOCIATION  
Petitioner.

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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,

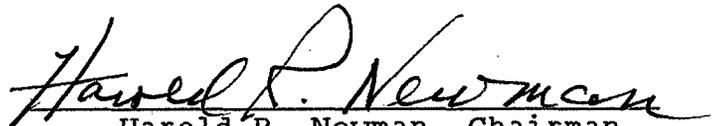
IT IS HEREBY CERTIFIED that the Bay Shore Classroom Teachers Association has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit:        Included:        All substitute teachers who have received a reasonable assurance of continuing employment in accordance with subdivision 10 of section 590 of the Labor Law.

Excluded:        All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Bay Shore Classroom Teachers 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: July 13, 1983  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

CATTARAUGUS-ALLEGANY-ERIE-WYOMING  
COUNTIES BOCES,

Employer.

-and-

CASE NO. C-2595

ENCHANTED MOUNTAIN TEACHERS ASSOCIATION/  
NEA/NY,

Petitioner.

-and-

CATTARAUGUS COUNTY BOCES TEACHERS  
ASSOCIATION/NYSUT,

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,

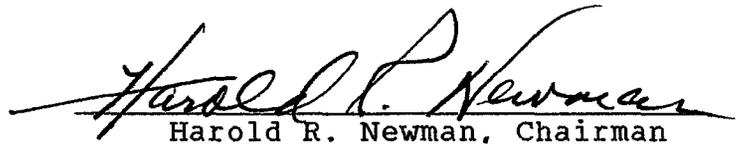
IT IS HEREBY CERTIFIED that the Cattaraugus County BOCES Teachers Association/NYSUT has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

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Unit:      Included:      All certified personnel.  
         Excluded:      Administration personnel.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Cattaraugus County BOCES Teachers Association/NYSUT 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:    July 13, 1983  
             Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member