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

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from November 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

In the Matter of
CITY OF NEWBURGH,

#2A-11/1/83

Respondent,

-and-

CASE NO. U-6562

LOCAL 589, INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS,

Charging Party.

WILLIAM M. KAVANAUGH, ESQ., for Respondent

CRAIN & RONES, P.C. (JOSEPH P. RONES, ESQ., of
Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the City of Newburgh (City) to a hearing officer's decision that it discriminated against and coerced Dennis Carpenter, an assistant fire chief, because of his testimony at a PERB hearing. The charge, filed by Local 589, International Association of Fire Fighters (Local 589), alleged that the City refused to pay Carpenter for time spent at a PERB hearing, while paying Paden, another assistant fire chief, when both were unit employees. Carpenter was subpoenaed by Local 589 and testified on its behalf, while Paden was subpoenaed by the City and testified on its behalf. The hearing at which they testified was on the application of the City to declare each of them, along with other unit employees, managerial or confidential.

In reaching her decision, the hearing officer relied upon the decision of this Board in Vestal Central School District, 4 PERB ¶3038 (1971). That decision held that the school district engaged in improper discriminatory conduct when it paid employees it called as witnesses for time spent at a PERB hearing in a strike proceeding but refused to pay employees called as witnesses by the employee organization.

Twice since the issuance of our decision in Vestal we have dismissed charges of improper discrimination when a public employer refused to pay witnesses subpoenaed by an employee organization for time spent at a PERB hearing, while paying its own witnesses for such time. City of New York Environmental Protection Agency, 10 PERB ¶3009 (1977) and City of White Plains, 15 PERB ¶3028 (1982). In doing so we noted that Vestal did not apply because the witnesses in the two later cases were named charging parties in the proceedings.

We are now presented with the broader issue of whether, and under what other circumstances, an employer may not be required to pay noncharging, union-subpoenaed witnesses, while paying its own subpoenaed witnesses. We conclude that, absent a clear showing of intent to retaliate against an employee for testifying in support of a union position, a public employer does not ordinarily engage in improper discriminatory conduct when it pays

employees whom it calls as witnesses for time spent at a PERB hearing but refuses to pay employees who are called as witnesses by the union. In this, we are persuaded by, and adopt the reasoning of, the National Labor Relations Board (NLRB) and the Public Employment Relations Commission of the State of Washington.

Two weeks after this Board decided Vestal, the NLRB held that an employer did not commit an unfair labor practice by failing to pay wages to witnesses subpoenaed by a union to appear at an NLRB hearing even though it paid regular wages to other employees whom it subpoenaed to appear at the same hearing. Electronic Research Co., 190 NLRB 778, 77 LRRM 1324 (1971). Six years later the NLRB affirmed that position in General Electric Co., 230 NLRB 683, 95 LRRM 1372 (1977), saying (at 1373-74):

[N]o party stands as the guarantor for equal payment to all witnesses summoned by all parties to the proceeding. A fortiori, an employer . . . is not as a general proposition obligated to pay opposition witnesses anything in connection with witness fees. Consequently, we conclude that an employer is not discriminating with respect to the employment relationship by not paying an employee called as a witness against it the difference between what such witness would have earned had he worked and what the party calling him as a witness is willing to pay. . . . [W]e find that there is nothing unlawful in an employer using the wages of witnesses as the measure of his compensating them for witness fees while not also paying employees called by other parties the difference between witness fees they receive from such parties and what they would have been paid as wages for the time they testified

Most recently, in Consolidated Aluminum Corp., 256 NLRB 345, 107 LRRM 1246 (1981), it restated the same position.

The Public Employment Relations Commission of the State of Washington has held that ordinarily, in litigation before it, each party is responsible for compensating its own witnesses. It indicated, however, that an employer could not refuse to compensate an employee for time spent while testifying for a union when the evidence clearly showed that the employer's reason for denying such compensation was to retaliate against him for his testimony. It found such a clear showing in that case. Shelton Education Association, 1 NPER 49-10004 (1979).

We are persuaded by the analysis of the NLRB and the Washington Public Employment Relations Commission. We too do not accept the proposition that disparate treatment of employee witnesses is in itself necessarily to be condemned as unlawful discrimination.

Here, no intent to discriminate was alleged or shown. The employer's payment of its witness was for time he spent in supporting the employer's case, legitimately brought under the law. We find no basis in the statute requiring the employer to subsidize the opposition's case. Accordingly, we determine that the City did not engage in improper discriminatory conduct when it paid its

own witness for time spent at a PERB hearing but refused to pay the witness of the employee organization for such time.

NOW, THEREFORE, WE REVERSE the decision of the hearing officer, and WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: November 1, 1983
Albany, New York

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

DISSENTING OPINION
OF BOARD CHAIRMAN HAROLD R. NEWMAN

This Board correctly determined in Vestal that a public employer violates the Taylor Law when it pays its own witnesses for time spent at a PERB hearing but refuses to pay the witnesses of an employee organization.^{1/} Such discrimination by a public employer must, inevitably, discourage public employees from participating in PERB hearings as witnesses who testify against the interests of their employer. As such, it interferes with their protected rights.

The City argues that the hearing officer should have found no violation because it distinguished between its witnesses and the witnesses of the employee organization on the basis of the good faith belief that such a distinction was legitimate and therefore there was no deliberate violation of the statute for the purpose of interfering with protected rights. I would reject this argument. The statutory requirement that the act of the public employer be deliberate means only that the action taken was intended. In contradistinction, a nondeliberate act is one that is

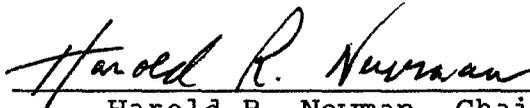
^{1/}The exceptions to this doctrine articulated in City of New York Environmental Protection Agency, 10 PERB ¶3009 (1977) and City of White Plains, 15 PERB ¶3028 (1982), are also correct, but they are not relevant to the issue before us.

rash or inadvertent. A finding of improper motivation may be inferred even in the absence of direct evidence where, by its very nature, the conduct tends to discourage the exercise of protected rights.^{2/} This was the theory of the Board in finding a violation in Vestal.

The City's second basis for its exceptions is that the hearing officer excluded testimony regarding a past practice in which it paid policemen for time spent testifying on its behalf but not for time spent testifying in proceedings in which they had an interest. Since the instant case concerns a different negotiating unit, the exclusion of that testimony was not in error as it was not relevant to the basis of the hearing officer's decision.

I would affirm the decision of the hearing officer.

DATED: November 1, 1983
Albany, New York


Harold R. Newman, Chairman

^{2/}State of New York, 10 PERB ¶3108 (1977).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2B-11/1/83

OLD BROOKVILLE POLICEMEN'S BENEVOLENT
ASSOCIATION, INC.,

Respondent,

-and-

CASE NO. U-6616

INCORPORATED VILLAGE OF OLD BROOKVILLE,

Charging Party.

LERNER & GORDON, ESQS. (LAWRENCE M. GORDON, ESQ.,
of Counsel), for Respondent

CULLEN & DYKMAN, ESQS. (THOMAS M. LAMBERTI, ESQ.,
and BEVERLY I. MORAN, ESQ., of Counsel), for
Charging Party

BOARD DECISION AND ORDER

The charge herein was filed by the Incorporated Village of Old Brookville (Village). It complains that the Old Brookville Policemen's Benevolent Association, Inc. (PBA) violated §209-a.2(b) of the Taylor Law in that it refused to negotiate sixteen proposals made by the Village. In its answer to the charge, PBA acknowledges its refusal to negotiate the sixteen proposals, but it asserts no legal obligation to negotiate those proposals because they involve nonmandatory subjects of negotiation. The hearing officer determined that ten of the proposals involved mandatory subjects of negotiation and six did not. The matter now comes to us on the exceptions of both

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parties. PBA has filed exceptions to nine of the ten determinations that the proposals are mandatory subjects of negotiation, and the Village has filed exceptions to all six of the hearing officer's determinations that these proposals are nonmandatory.

PBA's Exceptions

Proposal No. 6

During probationary period employee shall receive \$20 a week less than hiring rate.

The hearing officer determined that the proposal is for a wage rate for police officers who are in a probationary status and that wage rate proposals are mandatory subjects of negotiation. PBA argues that a wage rate for probationary employees is not a mandatory subject of negotiation because no police officer in the Village's employ is on probationary status. It also contends that probationary employees would not be in the PBA negotiating unit and therefore would not be covered by the parties' agreement. The Village responds that the unit consists of all police officers and that probationary police officers are merely new hires who, pursuant to the Nassau County Civil Service regulations, may be placed on probation for up to one year.

We determine that the positions that would be held by police officers who might be hired during the term of the agreement and put in probationary status would be in the negotiating unit. A proposal regarding the terms and conditions of employment of persons who are to be hired to

fill unit positions is a mandatory subject of negotiation.^{1/} We affirm the decision of the hearing officer regarding Proposal No. 6.

Proposals No. 8, 10, 12 and 14 deal with new hires and can be considered together. They provide:

Proposal No. 8

Eliminate sixth year longevity step for new hires.

Proposal No. 10

Freeze present holiday compensation and eliminate for new hires.

Proposal No. 12

\$1,000 supplemental pay for new hires.

Proposal No. 14

Provide twelve sick days for new hires.

Each of these proposals deals with the terms and conditions of employment of persons whom the Village may hire during the term of the agreement to serve in positions that are now in the negotiating unit. For the reasons stated in our discussion of Proposal No. 6, we affirm the decision of the hearing officer that such proposals constitute mandatory subjects of negotiation.

Proposal No. 21 also deals with the terms and conditions of employment of persons who may be hired during the period

^{1/}City of Peekskill, 12 PERB ¶3100 (1979); City of Newburgh, 16 PERB ¶3030 (1983).

covered by the agreement. It states:

Provide twenty-five year retirement plan for new hires.

In addition to the argument relating to new hires which we have already rejected, PBA contends that a municipality may not establish one retirement plan for some of its employees and another for other employees. City Building Employees Association v. Levitt, 67 AD2d 806 (4th Dept., 1979), aff'd on other grounds 49 NY2d 1033 (1980), contains language which provides some support for this position. However, the decision in the later case of Village of Fairport v. Newman, 90 AD2d 293 (Fourth Dept., 1982), 15 PERB ¶7033, app. dsmd. 58 NY2d 1112 (1983), 16 PERB ¶7013, is more directly in point and is to the contrary. Dealing with retirement benefits, it says that the parties are "free to negotiate . . . less advantageous terms for future employees" We therefore affirm the hearing officer's determination that Proposal No. 21 is a mandatory subject of negotiation.

Proposal No. 11

Eliminate additional salary for detectives but grandfather existing salary.

This too is a proposal affecting the terms and conditions of employment of persons who may be hired by the Village during the period covered by the agreement to fill a negotiating unit position. We affirm the hearing officer's determination that it is a mandatory subject of negotiation.

Proposal No. 38

Careless or negligent reports or documents to be corrected on officers' time without compensation.

PBA argues that the demand is not mandatory because it would impose additional working time upon police officers which might compel them to work beyond the time permitted by §971 of the Unconsolidated Laws. Rejecting this argument, the hearing officer determined that the demand is mandatory because it merely deals with compensation. We affirm the decision of the hearing officer. There is no more reason to conclude that unpaid time during which carelessly prepared reports would be corrected would exceed that permitted by law than there is to conclude that the presumably paid time during which such reports are now corrected exceeds that permitted by law.

Proposal No. 49

Contract to be self-renewing for one year periods unless either party gives the other sixty days notice of termination.

The proposal merely sets forth a formula for determining the duration of the agreement. The hearing officer correctly ruled that such a proposal is a mandatory subject of negotiation.^{2/}

^{2/}See Lynbrook PBA, 10 PERB ¶3067 (1977), confirmed Village of Lynbrook v. PERB, 48 NY2d 398, 12 PERB ¶7021 (1979).

The Village's ExceptionsProposal No. 20

Eliminate health insurance payments for employees who retire after June 1, 1982.

The Village presented its proposals to PBA on December 7, 1982. By that time some police officers may have already retired after June 1, 1982. Relying upon City of Troy, 10 PERB ¶3015 (1977), the hearing officer ruled that the proposal is not a mandatory subject of negotiation to the extent that it dealt with employees who had already retired. He further found that the demand was a unitary one and therefore nonmandatory in its entirety.^{3/}

The Village argues that the hearing officer's reliance on City of Troy is misplaced in that Troy declared nonmandatory the negotiation of benefits of persons who were not employed during the period covered by the agreement, while its proposal would only cover persons who were employed by the Village on and after June 1, 1982, the day on which the parties' agreement would take effect. The distinction drawn by the Village is correct. The parties' prior agreement expired on May 30, 1982, and a successor agreement may apply retroactively to persons who were employed by the Village between the expiration of the prior agreement and the execution of its successor. Accordingly, the proposal is a mandatory subject of negotiation.

^{3/}See Town of Haverstraw, 11 PERB ¶3109 (1978).

Proposal No. 22

Employees to pay any increase in retirement costs over 1982.

The hearing officer determined that the proposal was nonmandatory because "the Village has cited no statutory provision permitting an assumption of such expense by employees." The Village argues that the proposal should have been found mandatory because the cost of retirement benefits is a term and condition of employment and there is no statutory provision prohibiting the assumption of such costs. Citing Town of Huntington v. Associated Teachers, 30 NY2d 122, 5 PERB ¶7507 (1972), it argues that, in the absence of an explicit prohibition, all terms and conditions of employment are mandatory subjects of negotiation.

We find no statutory, decisional or administrative prohibition of the assumption of part of the costs of retirement benefits by public employees. Accordingly, we determine that Proposal No. 22 is a mandatory subject of negotiation.

Proposal No. 44 (as modified)

An employee who carries an off-duty gun outside the territorial area of his employment shall be deemed not working in the scope of his employment and the employer shall not be responsible for his acts.

The hearing officer determined that the proposal is not a mandatory subject of negotiation because it "encompasses matters beyond the employment relationship" The Village argues that the proposal is mandatory

because it defines the employment relationship.

We affirm the hearing officer's decision. The Village may determine unilaterally whether to impose employment obligations upon police officers outside its territorial area. Its decision to do so is not a mandatory subject of negotiation.^{4/}

Proposals No. 46 and 47 can be considered simultaneously. They provide:

Proposal No. 46

Employee who refuses to accept medical treatment and hospital care including tests shall be deemed to have resigned effective 30 days after ordered to do so.

Proposal No. 47

Employee who is not granted accidental disability retirement, who is able to perform light duty in the opinion of the Village appointed medical doctor and refuses to do so, shall be deemed to have resigned effective 30 days after ordered to do so.

The hearing officer determined that the subject matter of the proposals is covered by General Municipal Law §207-c. Subdivision 1 of that section provides that an injured or sick policeman who refuses to accept medical treatment shall be deemed to have waived his right to be reimbursed for expenses for medical treatment and hospital care and for salary and wages payable after such refusal.

^{4/}City of Rochester, 12 PERB ¶13010 (1979).

Subdivision 3 provides that a police officer who is able but refuses to perform light duty work shall not receive salary or wages, but shall continue to be reimbursed for medical expenses. The benefits provided by GML §207-c cannot be withheld except by the terms of that law.^{5/} In City of Binghamton, 9 PERB ¶3026 (1976), confirmed Binghamton v. Helsby, 9 PERB ¶7019 (Sup. Ct., Alb. Co., 1976), we held that a union cannot be required to negotiate the waiver of such employee rights. It follows that the two proposals are nonmandatory.

Proposal No. 48

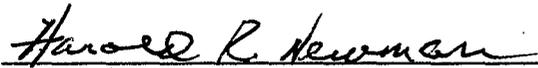
Employee on medical leave for more than one year who is not able to return to duty as determined by the Village appointed medical doctor shall be deemed to have resigned effective 30 days after one year medical leave.

This proposal is in direct controvention of GML §207-c which provides that a disabled employee continues to receive benefits until 1) he reaches the mandatory retirement age, 2) he is granted an accidental disability retirement allowance, or 3) he violates any of the conditions imposed by the statute. This proposal would permit the Village to impose retirement upon a covered employee merely by reason of the lapse of time after the disability commences. It is therefore not a mandatory subject of negotiation.

^{5/}Connors v. Bowles, 63 AD2d 956 (2d Dept., 1978), mot. lv. app. den. 45 NY2d 832 (1978).

NOW, THEREFORE, WE ORDER PBA to negotiate in good faith the proposals found to be mandatory subjects of negotiation and that the charge herein be, and it hereby is, dismissed in all other respects.

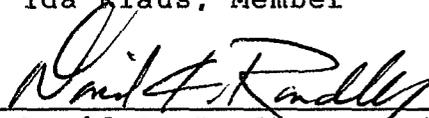
DATED: November 1, 1983
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
CITY OF BATAVIA,

#2C-11/1/83

Respondent,

Case No. U-6154

-and-

BATAVIA POLICE BENEVOLENT ASSOCIATION,

Charging Party.

HARTER, SECREST & EMERY, ESQS. (JACK D. EISENBERG,
ESQ., SUE A. JACOBSEN, ESQ. AND BARRY R. WHITMAN,
ESQ., of Counsel), for Respondent

SARGENT & REPKA, P.C. (NICHOLAS J. SARGENT, ESQ.,
of Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the City of Batavia (City) to a hearing officer's decision that it unilaterally changed the medical plan which it had provided to its police officers, in violation of the duty to bargain in good faith. The charge had been brought by the Batavia Police Benevolent Association (PBA) which represents the City's police officers.

Prior to the change which is the subject of the improper practice charge, the City provided a medical plan consisting of Blue Shield coverage of physicians' charges, Blue Cross hospitalization coverage, major medical insurance and coverage of drug costs. The collective bargaining

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agreement between the City and the PBA which expired on December 31, 1981, referred to the Blue Shield Plan (known as the "50-51 Western New York Health Plan"), the major medical and the drug coverage, but not to the Blue Cross hospitalization coverage. It provided:

Article XII
INSURANCE

1. The 50-51 Western New York Health Plan with major medical and \$1 company drug rider will be provided by the city. This will include all personnel who retire after January 1, 1974.

Prior to February 1981, the drug coverage was provided by Blue Cross. In that month the City took over the program as a self-insurer without prior negotiation with PBA, and without objections from it.

The parties commenced negotiations for a successor collective bargaining agreement in July 1981. From the outset, the City sought to negotiate a clause that would permit equivalent benefits through an alternate carrier or self-insurance. That dispute remained unresolved through mediation, interest arbitration^{1/} and further negotiation. On May 21, 1982, the City notified the PBA that it would proceed to implement a self-funded program. Despite the continuous objections of the PBA, the City implemented

^{1/}The health insurance dispute was presented to the interest arbitration panel, but its award, issued on May 3, 1982, did not deal with this dispute.

its program on June 14, 1982, and contracted with Healthcare Administrative Services of New York, Inc. (HASNY) to administer the plan commencing July 1, 1982. On July 2, 1982, it cancelled the Blue Cross/Blue Shield Plan.

The hearing officer found no evidence that the change from the Blue Cross/Blue Shield plan to self-insurance resulted in any substantive changes in benefits or administrative procedures. He further found, however, that a self-funded plan is fundamentally different from one provided by a carrier. By reason of these fundamental differences, he concluded that the change of programs constituted a change in terms and conditions of employment in violation of CSL §209-a.1(d).

In finding a violation, the hearing officer relied on a decision of a hearing officer in City School District of the City of Corning, 16 PERB ¶4533 (1983), aff'd 16 PERB ¶3056 (1983), which also found that a self-funded plan and one provided by an insurance carrier are fundamentally different. We based the Corning decision on an alternate ground, namely, that the unilaterally imposed plan provided benefits that were substantively less favorable for the employees than the previous plan.^{2/}

^{2/}Some of these involved specified benefits, others flowed from differences in the administrative practices of the insurance carrier and self-insurance benefit plan administrator.

As the record in the instant proceeding reveals no substantive differences in the benefits available under the two plans or in the procedures by which they are administered, we must consider whether there are such fundamental differences between the kind of protection provided by an insurance carrier and by self-insurance as to constitute a material change in the terms and conditions of employment of the police officers. Our review of the Insurance Law, of the rules of the New York State Insurance Department and of the record herein persuades us that there are.

Pursuant to the Insurance Law, insurance carriers are regulated by the New York State Insurance Department. Employers that provide self-insurance coverage for their employees and companies that administer such self-insurance programs on behalf of employers are not covered by comparable regulations, because neither is doing an insurance business.^{3/} Thus, an employee who enjoys carrier-provided health insurance benefits has an administrative remedy before the Insurance Department if the carrier engages in unfair

^{3/}Insurance Law §41; Colaizzi v. Pa. R. R. Co., 208 NY 275 (1913); Mutual Life Ins. Cr. v. NYS Tax Comm., 32 NY2d 348 (1973); Aetna Casualty and Surety Co. v. World Wide Rent-A-Car, 28 AD2d 286 (1st Dept., 1967).

claims settlement practices while one whose benefits derive from self-insurance does not.^{4/} Similarly, only an employee who enjoys carrier-provided health insurance benefits is protected by state standards relating to the solvency of insurance carriers.^{5/} The fact that the State Legislature deems these protections to be important enough to impose them upon all insurance carriers is an indication of their substantiality, thus making their elimination a change in the basic assurance accorded employees in the previously enjoyed health and welfare aspects of the terms and conditions of their employment.^{6/}

Accordingly, we affirm the hearing officer's determination that the unilateral change from carrier-provided insurance to employer-provided self-insurance was a violation of §209-a.1(d) of the Taylor Law.

^{4/}Insurance Law §40-d; 11 NYCRR §216 et. seq.

^{5/}Insurance Law §§26, 27, 28, 98, 256 and Article 16.

^{6/}While the employment relations agency of at least one other state held that the change from carrier-provided insurance to self-insurance does not, by itself, impact upon terms and conditions of employment and, therefore, is not a mandatory subject of negotiation (Menomonie Education Assn., Wisconsin Employment Relations Commission, Case No. 23812, January 2, 1981), the implications of the New York State Insurance Law compels a contrary conclusion in this state.

Having so determined, we must now consider the City's exceptions to the hearing officer's rejection of its other defenses. These were that PBA waived its right to negotiate the change; that there were compelling reasons to make the change and that the City was willing to negotiate after making it; that the Blue Shield "50-51" plan had been discontinued by Blue Cross/Blue Shield as of January 1, 1983, and, therefore, there can be no make-whole remedy.

Having reviewed the record, we affirm the hearing officer's rejection of these defenses for the reasons set forth in his decision. Accordingly, the exceptions are dismissed.^{7/}

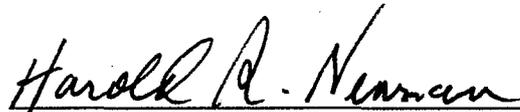
NOW, THEREFORE, WE ORDER the City of Batavia to:

1. Immediately reinstate the prior insurance plan or provide equivalent insurance coverage by the same or another insurance company regulated by the New York State Insurance Department;
2. Make unit employees whole for any loss or diminution of benefits caused by the implementation of the City's self-insurance plan;

^{7/}The City moved to dismiss the PBA's response to its exceptions for late filing. We need not decide this motion inasmuch as the exceptions present nothing for consideration which was not considered and rejected by the hearing officer.

3. Negotiate in good faith with the PBA;
4. Sign and post notices in the form attached at all locations normally used for communications to unit employees.

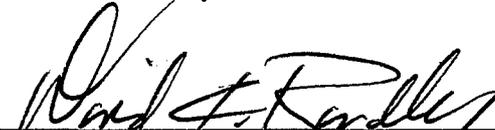
DATED: November 1, 1983
Albany, New York



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 non-supervisory unit represented by the Batavia Police Benevolent Association (PBA) that the City of Batavia will:

1. Immediately reinstate the prior insurance plan or provide equivalent insurance coverage by the same or another insurance company regulated by the New York State Insurance Department;
2. Make unit employees whole for any loss or diminution of benefits caused by the implementation of the City's self-insurance plan;
3. Negotiate in good faith with the PBA.

.....
City of Batavia

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

COUNTY OF ONEIDA and SHERIFF OF
ONEIDA COUNTY,

#2D-11/1/83

Joint Employer,

-and-

ONEIDA COUNTY DEPUTY SHERIFF'S
BENEVOLENT ASSOCIATION,

CASE NO. C-2611

Petitioner,

-and-

LOCAL 182, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,

Intervenor.

DAVID R. TOWNSEND, JR., for Petitioner

ROCCO A. DePERNO, ESQ. (FREDERICK W. MURAD,
ESQ., of Counsel), for Intervenor

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Oneida
County Deputy Sheriff's Benevolent Association (OCDSBA)
to a decision of the Director of Public Employment

8605

Practices and Representation (Director) dismissing its petition on the ground that it had been filed without proper authorization. The petition was to represent deputy sheriffs jointly employed by the County of Oneida and the Sheriff of Oneida County and currently represented by Local 182, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Local 182).

The petition was filed by David R. Townsend, Jr. At the pre-hearing conference, Local 182 asserted that the petition was invalid. It presented affidavits from eleven of the fourteen OCDSBA officers and directors at the time of the filing of the petition which stated that Townsend held no OCDSBA office at that time and was not authorized to file the petition. While confirming his formal lack of authorization, Townsend asserted that the membership signatures constituting the showing of interest were a sufficient indication of his authority. He also stated that he was elected president of OCDSBA four weeks after he filed the petition.

After the conference, the trial examiner prepared a statement of the facts that had been agreed upon and she sent it to the parties. Her letter noted that the

officers and directors of OCDSBA had not authorized the petition and that OCDSBA's constitution and bylaws did not grant individual members any right to act on its behalf. She ended her letter by stating that no hearing would be held unless Townsend submitted additional facts or legal arguments with respect to his authority to file the petition.

Townsend responded by contesting the validity of some of the affidavits on the ground that the persons executing them were not officers or directors at the time of their execution. The Director found this response irrelevant because Townsend had conceded that he had not been authorized to file the petition by whomever constituted OCDSBA's officers and directors. Among the affidavits to which Townsend objected was one by Vennero, OCDSBA's former president. Townsend's letter stated that Vennero had resigned his office in November 1982. Other material presented at the conference indicates that Vennero was still president in April 1983.

The exceptions filed by Townsend as president of OCSDBA make the following allegations of fact:

- A. The bylaws authorize the president to act on behalf of OCDSBA between general meetings.
- B. The former president resigned his office during November 1982.
- C. The then vice-president of OCDSBA became acting president in accordance with the bylaws of the organization.
- D. The acting president then authorized Townsend to file the petition herein.

On the basis of these allegations, Townsend argues that the Director erred in determining that he was not authorized to file the petition.

We find that the materials submitted to the Director did not include allegations sufficient to raise a question of fact regarding Local 182's objections to the validity of the petition. On the alleged facts before him, the Director properly dismissed the petition without requiring a hearing.^{1/}

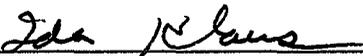
^{1/}See Spencerport CSD, 16 PERB ¶3074 (1983), in which we held that where a party had the opportunity to make allegations of fact before the dismissal of its charge but did not do so, we will not consider whether allegations of fact made thereafter would have justified a hearing.

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

DATED: November 1, 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

#2E-11/1/83

CSEA, NASSAU LOCAL 830,

Respondent,

-and-

CASE NO. U-6799

LOCAL 808, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Charging Party.

In the Matter of

TOWN OF NORTH HEMPSTEAD,

Respondent,

-and-

CASE NO. U-6800

LOCAL 808, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Charging Party.

ROEMER AND FEATHERSTONHAUGH, ESQS. (WILLIAM M.
WALLENS, ESQ., of Counsel), for CSEA, Nassau
Local 830

ROBERT DOLAN, ESQ., for Town of North Hempstead

O'DWYER & BERNSTEIN, ESQS. (GARY SILVERMAN, ESQ.,
of Counsel), for Local 808, International
Brotherhood of Teamsters

BOARD DECISION AND ORDER

8610

This matter comes to us on the exceptions of Local 808, International Brotherhood of Teamsters (Local 808) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing its charge (U-6799) against CSEA, Nassau Local 830 (Local 830) and its charge (U-6800) against the Town of North Hempstead (Town). The charges allege that Local 830 and the Town were improperly motivated when they entered into a collective bargaining agreement on April 27, 1983, and that this improper motivation constituted an improper practice. Local 808 contends that the timing of the agreement was designed to deprive the employees of the Town of the right to vote in a representation election.

Local 830 was the representative of the employees covered by the agreement when it was signed. The Director ruled that a public employer and an employee organization do not violate the Taylor Law by hastening to conclude a collective bargaining agreement in order to avoid the initiation of a representation proceeding by another employee organization. He therefore dismissed the charges on the ground that they do not allege improper conduct. In its exceptions, Local 808 complains that the Director failed to consider various allegations it made in support of its charges.

In order to meet the Director's objections to its charges, Local 808 made three supplementary allegations, and

amended its charge against the Town by specifically including a reference to §209-a.1(a), (b) and (c) of the Taylor Law. The first of the supplementary allegations elaborated upon the charges by stating that the sole purpose of the agreement of April 27, 1983, was to frustrate Local 808's intention to file a representation petition.^{1/} The other two supplementary allegations were designed to show that the Town bore animus toward Local 808 and preferred to deal with Local 830. One is that supervisory employees of the Town spread false and misleading stories about Local 808 and threatened reprisals against the employees if Local 808 were certified. The other is that supervisory employees of the Town assisted Local 830 in the collection of ratification vote ballots.

We affirm the Director's determination that the latter two allegations were not encompassed by the charges before him.^{2/} We also affirm his determination that it is not

^{1/}Pursuant to PERB Rule 201.3(e), a timely petition could have been filed by Local 808 on or after May 1, 1983, if Local 830 and the Town had not entered into a collective bargaining agreement before that date.

^{2/}The Director properly noted that these two allegations might constitute the basis of separate charges. In this connection, we observe that Local 808 amended its charge against the Town with respect to a statutory reference, but not to allege any improper conduct other than that Local 830 and the Town entered into an agreement on April 27, 1983.

improper for an employee organization and a public employer to accelerate their negotiations for the purpose of concluding an agreement before the commencement of the period when an outside employee organization could properly file a petition under our Rules of Procedure. These rules afford an employee organization two distinct opportunities to challenge a recognized or certified employee organization. The primary opportunity, afforded by Rule 201.3(d), is to file a petition during the eighth month before the expiration of an existing agreement. The alternative opportunity, afforded by Rule 201.3(e), is to file a petition four months after the expiration of an agreement if no new agreement has been reached. Local 808 did not file a petition during the eighth month before the expiration of the agreement between Local 830 and the Town and it has no Taylor Law right to file again until the eighth month before the expiration of the next agreement. Accordingly, Local 830 and the Town violated no Taylor Law right of Local 808 by entering into an agreement which deprived Local 808 of an opportunity to petition after the expiration of their past agreement.

NOW, THEREFORE, WE ORDER that the charges herein be,
and they hereby are, dismissed.

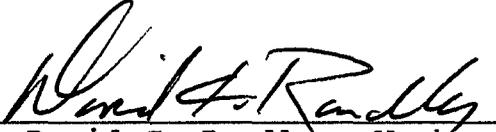
DATED: November 1, 1983
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
COUNTY OF NASSAU,

#2F-11/1/83

Respondent,

CASE NO. U-5571

-and-

PATROLMEN'S BENEVOLENT ASSOCIATION OF
THE POLICE DEPARTMENT OF THE COUNTY OF
NASSAU, INC.,

Charging Party.

EDWARD G. McCABE, ESQ. (PETER A. BEE, 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 motion of the County of Nassau to modify our decision and order issued on December 30, 1982. The motion recites events which it is asserted warrant modification of the order. All of these events occurred prior to the date when the parties entered into the stipulation of facts dated April 15, 1982, upon which the hearing officer's decision was based. Nassau County argues that one of the events upon which it relies is its entry into a formal agreement with the Patrolmen's Benevolent Association of the Police Department of the County of Nassau, Inc, after the stipulation was executed. The agreement, however, was merely the formalization of a

memorandum of agreement that had been entered into before the stipulation was executed.

The County was aware of the events recited in the motion when they occurred. These events cannot, therefore, be the basis for a motion at this time to modify our decision and order. Binghamton Fire Fighters, Local 729, IAFF, AFL-CIO, 9 PERB ¶3078 (1976).

Accordingly, we order that the motion be, and it hereby is, denied.

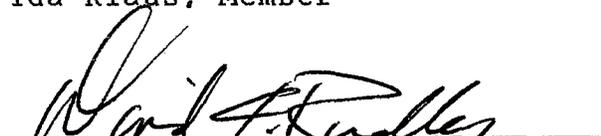
DATED: November 1, 1983
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2G-11/1/83

In the Matter of

ELLENVILLE CENTRAL SCHOOL DISTRICT,

Employer,

-and-

ELLENVILLE ADMINISTRATORS AND
SUPERVISORS ASSOCIATION,

Petitioner.

BOARD DECISION
AND ORDER

CASE NO. C-2510

On September 30, 1982, the Ellenville Administrators and Supervisors Association (petitioner) filed a timely petition for certification as the exclusive negotiating representative of certain administrative employees of the Ellenville Central School District.

A secret ballot election was held on October 18, 1983, pursuant to an Order issued by this Board on July 27, 1983,^{1/} in which we found the appropriate negotiating

^{1/} We ordered that a secret ballot election be held among eligible employees in the unit determined to be appropriate. Also in that decision we affirmed the Director's finding that the elementary school principal and secondary school principal positions were appropriately in the Administrators unit even though the incumbents were designated managerial or confidential.

unit to be as follows:

Included: Secondary Principal (10-12),
Secondary Principal (7-9), Assistant
Principal (10-12), Elementary
Principal, Assistant Principal
(Elementary), Director of Physical
Education and Athletics (K-12).

Excluded: All other employees;

The results of the election indicate that a majority of
eligible voters in the unit do not desire to be represented
by the petitioner.^{2/}

THEREFORE, IT IS ORDERED that the petition be, and it
hereby is, DISMISSED.

Dated: Albany, New York,
November 1, 1983


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

^{2/} Of the three ballots cast, one was for and two against
representation by the petitioner. There were no
challenged ballots.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#3A-11/1/83

VILLAGE OF SKANEATELES,

Employer.

-and-

CASE NO. C-2522

SKANEATELES POLICE BENEVOLENT ASSOCIATION,

Petitioner.

-and-

ONONDAGA LOCAL 834 OF THE CIVIL SERVICE
EMPLOYEES ASSOCIATION, LOCAL 1000, AFSCME,
AFL-CIO,

Intervenor.

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 Skaneateles Police Benevolent Association has been designated and selected by a majority of the employees of the above named employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All police officers.
 Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Skaneateles Police Benevolent 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: November 1, 1983
 Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

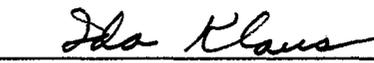
Excluded: Chief of Police, captains,
detective lieutenants, and
lieutenants.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Southtown Police Club, Inc. 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: November 1, 1983
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member