4-11-1984

State of New York Public Employment Relations Board Decisions from April 11, 1984

New York State Public Employment Relations Board

State of New York Public Employment Relations Board Decisions from April 11, 1984

Keywords

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of #2A-4/11/84

NEW YORK STATE PUBLIC EMPLOYEES FEDERATION and JAMES J. SHEEDY, as Secretary Treasurer,

Respondents,

-and- CASE NO. U-6683

DAVID B. LEEMHUIS,

Charging Party.

JAMES R. SANDNER, ESQ. (JANIS LEVART BARQUIST, ESQ., of Counsel), for Respondents

DAVID B. LEEMHUIS, pro se

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the New York State Public Employees Federation and James J. Sheedy, as Secretary Treasurer (PEF), the respondents herein, to action taken by the Director of Public Employment Practices and Representation (Director) approving a request made by David B. Leemhuis on January 12, 1984 to withdraw the charge herein, which he had filed on March 3, 1983. At that time, the parties had entered into a stipulation as to the material facts and had submitted memoranda in support of their respective positions.

Janis Barquist, PEF's attorney, received a copy of Leemhuis' request to withdraw his charge on January 17, 1984. She telephoned the Administrative Law Judge, Frederick Reich, on the next day, informing him that she objected to the request. According to Barquist, Reich told her that he had "already made

a determination to grant Mr. Leemhuis' request" but that her opposition and her reasons for it would be transmitted to the Director. She then told Reich her reasons for opposing the withdrawal and she states in her exceptions that she indicated that a letter to the Director would follow.

Mr. Reich informed the Director of PEF's opposition to Leemhuis' withdrawal and its reasons therefor. Thereupon, the Director wrote to PEF's attorney that her reasons for opposing the withdrawal of the charge were not sufficient and that he was approving the withdrawal. Subsequently, the Director received the letter from Barquist, which letter merely stated the same position as she had stated to Reich orally.

Barquist's arguments opposing the withdrawal are repeated in her exceptions. In substance, she argues that PEF has been inconvenienced by having expended time in preparing its response to the charge and that it is therefore entitled to a ruling on the merits of its response. There is no allegation or showing that PEF was in any way prejudiced by the withdrawal.[1/]

Barquist would have us follow the principle of CPLR Rule 3217, which permits the voluntary discontinuance of a lawsuit after a responsive pleading is served:

> upon terms and conditions as the court deems proper [provided, however, that] . . . [a]fter the cause has been submitted to the court or

---

[1/]As the period during which Leemhuis may file a new charge has expired (PERB Rules of Procedure §204.1(a)(1)), PEF cannot be prejudiced by any attempt to reinstitute this proceeding.

> jury to determine the facts the court may not order an action discontinued except upon the stipulation of all parties appearing in the action.

She argues that the Director should have followed this approach, and that if he had, he would not have allowed the withdrawal over PEF's objections.

We affirm the action of the Director. In doing so, we note significant respects in which the CPLR rule is inapplicable here. First, our own Rule 204.1(d), which must be controlling, differs from CPLR Rule 3217. Our rule provides:

> The charge may be withdrawn by the charging party before the issuance of a final order based thereon upon approval by the Director. Whenever the Director approves the withdrawal of a charge, the case will be closed.

Thus, the Director has authority to approve the withdrawal of a charge without the approval of the other party until a final order is issued and no such order was issued here.

Second, we note that there are no issues of fact in the instant case, all the relevant facts having been agreed to by stipulation. Finally, in confirming the ruling of the Director, we stress the absence of prejudice to PEF.[2]

As we find no indication of prejudice, there would be no reason to deem the ruling of the Director an abuse of discretion even under CPLR standards. Even more clearly, the Director's action

---

[2]Compare McKinney's Practice Commentary C3217:12 under CPLR Rule 3217.

was in accordance with our own Rules.

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

DATED: April 11, 1984
New York, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-4/11/84

In the Matter of

COUNTY OF ERIE and ERIE COUNTY SHERIFF,

Joint Employer,

-and-

NEW YORK STATE INSPECTION, SECURITY & LAW ENFORCEMENT EMPLOYEES, DISTRICT COUNCIL 82, AFSCME, AFL-CIO,

CASE NO. C-2634

Petitioner,

-and-

NEW YORK COUNCIL 66 & LOCAL 2060, AFSCME, AFL-CIO,

Intervenor.

MICHAEL A. CONNORS, ESQ., for Joint Employer

ROWLEY, FORREST & O'DONNELL, P.C. (BRIAN J. O'DONNELL, ESQ., of Counsel), for Petitioner

SARGENT & REPKA, P.C. (DAVID A. FERSTER, ESQ., of Counsel), for Intervenor

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the New York State Inspection, Security & Law Enforcement Employees, District Council 82, AFSCME, AFL-CIO (DC 82) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing its petition for certification as the representative of certain employees

proposals for the 1977 negotiations, and that the negotiating committee rejected all of them. None of the proposals dealt with problems that were unique to supervisors. They were rejected because the negotiating committee found them of lower priority than other demands upon which the committee chose to concentrate its efforts. The supervisory subunit made the same three proposals in 1980, and this time they were taken to the table by the negotiating committee. The demands were dropped, however, in return for higher base salaries. DC 82 also asserts that the other unit employees discriminate against the supervisors with respect to internal union matters. It points to the defeat of John Evans in his bid for reelection as president of Local 2060, an office he had held for six years, after being promoted to a supervisory position. There is testimony that Evans' promotion was an important election issue.

The Director determined that the evidence was not sufficient to establish a conflict of interest between the supervisors and the rank and file employees. We reach the same conclusion on all the evidence.

The Director also rejected DC 82's argument that the supervisors should be removed from the existing negotiating unit because the current unit structure has the potential of subverting the performance of their supervisory

functions. In this, the Director noted both the absence of any evidence supporting the proposition, and the posture of the Joint Employer which opposes the petition and asserts that it is aware of no such problem.

Finally, DC 82 argues that we should give little weight to the length of time that the combined unit has been in existence because the growth of the number of supervisors from 12 to 42 since the unit was created has given the now relatively large group of supervisors a sense of separate identity. It acknowledges that we held in Buffalo City School District, 14 PERB ¶3051 (1981), that substantial weight should be given to the continuation of long-standing units. In that case, as in this, the employer claimed no threat to the integrity of supervision in a unit combining supervisors and rank-and-file employees and there was no persuasive evidence that the interests of the supervisors and rank-and-file employees were in conflict. Accordingly, we rejected a petition to remove the supervisors from a long-standing unit.

DC 82 now argues that we should not follow Buffalo City School District because of the increase in the number of supervisors. We are not persuaded by this argument. The extent of the increase in the number of supervisors in this case is not, by itself, a sufficient reason for fragmenting the existing unit.

NOW, THEREFORE, WE AFFIRM the decision of the Director, and

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

DATED: April 11, 1984
New York, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-4/11/84

In the Matter of

CHURCHVILLE-CHILI CENTRAL SCHOOL DISTRICT,

Respondent,

-and-

CASE NO. U-7054

CHURCHVILLE-CHILI EDUCATION ASSOCIATION,

Charging Party.

THEALAN ASSOCIATES (by ANTHONY P. DiROCCO), for Respondent

CHRISTOPHER J. KELLY, for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Churchville-Chili Education Association (Association) to an Administrative Law Judge decision dismissing its charge on the ground that it did not set forth a violation of the Taylor Law.

The charge alleges that the Churchville-Chili Central School District (District) assigned teachers to a special program for gifted students for the 1983-84

school year, whereas prior teacher participation in the program had been voluntary. At the pre-hearing conference, the Administrative Law Judge ascertained from the parties that the program did not entail more classroom teaching time than regular teaching assignments did. He then wrote to the parties that he would dismiss the charge unless the Association indicated to him that the charge contemplated more than the assignment of teachers to one teaching program instead of another. The Association responded by letter that it was complaining that the program for gifted students requires additional preparation time and that teachers who volunteered in the past, and those who are currently assigned, have to remain in school beyond the regular school day in order to prepare material for the program. It further alleged that the increased time is significant.

The Association then urged the Administrative Law Judge to hold a hearing, stating that the case turns on an issue of fact: does assignment to the program significantly increase the work load and time requirements imposed upon teachers? If so, according to charging party, the District's conversion of the program from a voluntary to a mandatory one was improper.

The Administrative Law Judge rejected this argument. Focusing on the actual language of the charge, he found no reference to increased work load or time. Noting that the charge merely alleges that a voluntary teaching program had been made mandatory, he determined that the program involved normal work of teachers. Thus, according to the Administrative Law Judge, the change was a management prerogative.

The Association's exceptions argue that the Administrative Law Judge erred in not holding a hearing on the question of increased work load and time. We find merit in this argument, concluding that the Administrative Law Judge has read the charge too narrowly. While, by its terms, the charge merely complains that the District's improper conduct consisted of "revising the voluntary nature of participating in the program", we determine that it is sufficient to raise the issue that this unilateral action was improper because it might result in a loss of duty-free time during the workday or an extension of that workday.

NOW, THEREFORE, WE ORDER that this matter be remanded to the Administrative Law Judge for further proceedings

consistent with this opinion.[1/]

DATED: April 11, 1984
New York, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

[1/]We note that the District has raised as defenses to the charge that it did not change the program from a voluntary one to a mandatory one and that the Association, by its own actions, necessitated the assignment of teachers to the program. The merits of these defenses are properly before the Administrative Law Judge on this remand.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-4/11/84

In the Matter of

STATE OF NEW YORK,

Respondent,

-and-

CASE NO. U-7207

DOCTORS COUNCIL,

Charging Party.

GORDON, SHECHTMAN & GORDON, P.C. (RONALD H. SHECHTMAN, ESQ., of Counsel), for Charging Party

BOARD DECISION AND ORDER

The charge herein was filed by Doctors Council, an employee organization that has been certified to represent physicians employed by the New York City Health and Hospitals Corporation (HHC) at the Kings County Hospital. The charge alleges that some members of its negotiating unit work at Downstate Medical Center, a facility of New York State, and that the State refused to "meet, consult and or bargain" with Doctors Council with respect to the terms and conditions of those unit members.

The Director of Public Employment Practices and Representation (Director) determined that the charge does not allege a violation of the Taylor Law in that Doctors Council has not been recognized or certified to represent any of the State's employees and, accordingly, the State has no Taylor Law duty to "meet, consult and or bargain" with it.

In its exceptions, Doctors Council asserts that its unit members who work at Downstate are jointly employed by the State and HHC. Assuming, however, that there are physicians who work for the State/HHC as a joint employer, the decision of the Director should, nevertheless, be affirmed. Doctors Council's certification as the representative of employees of HHC gives it no right to represent employees of the State/HHC as a joint employer, and it has not been recognized or certified as a representative of the employees of that joint employer. Moreover, the charge complains of a violation by the State and not by the alleged joint employer.

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

DATED: April 11, 1984
New York, 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-4/11/84

AMHERST EDUCATION ASSOCIATION,

Respondent,

-and- CASE NO. U-7103

AMHERST CENTRAL SCHOOL DISTRICT,

Charging Party.

BRADEN MacDONALD, for Respondent

FLAHERTY, COHEN, GRANDE, RANDAZZO & DOREN, P.C. (JEREMY V. COHEN, ESQ., of Counsel), for Charging Party

BOARD DECISION AND ORDER

On May 10, 1983, the Amherst Education Association (Association) requested certain dental benefits on behalf of former employees of the Amherst Central School District (District), alleging that the District had obligated itself to provide those benefits. It filed a grievance when the District denied that it had accepted any such obligation, and on September 13, 1983, it demanded arbitration of that grievance.

The District then filed the charge herein. It alleges that the Association violated its duty under §209-a.2(b) of the Taylor Law to negotiate in good faith by seeking to arbitrate the grievance, thereby attempting to compel the

District to provide benefits to nonemployees. The Administrative Law Judge dismissed the charge on the ground that the Association's conduct as alleged does not violate the Taylor Law. The matter now comes to us on the exceptions of the District.

We affirm the decision of the Administrative Law Judge.

The Association, in its grievance, asserts that the District has obligated itself to provide dental benefits to retirees. The charge alleges that the District did not accept such an obligation, and, in any event, the contractual grievance procedure is unavailable to the Association to assert such an obligation. Thus, according to the District, the Association's effort to compel arbitration is not based upon any agreement and must therefore be seen as an improper attempt to negotiate dental benefits for retirees through the use of the grievance procedure.

The District's interpretation of its agreements with the Association may constitute valid defenses to the Association's grievance. Even if valid, however, they do not make the Association's demand for arbitration an improper practice within the meaning of the Taylor Law. The Administrative Law Judge correctly determined that the demand for arbitration merely constitutes the allegation of a contractual right and is not a demand to negotiate benefits for retirees. This allegation of a contractual right, whether it is meritorious or not, does not violate the Taylor Law.

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

DATED: April 11, 1984
New York, 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

#2F-4/11/84

CENTRO, INC. CNY and AMALGAMATED TRANSIT UNION, LOCAL 580,

Respondents,

CASE NO. U-7257

-and-

GEORGE F. ENSWORTH,

Charging Party.

GEORGE F. ENSWORTH, pro se

BOARD DECISION AND ORDER

The charge herein was filed by George F. Ensworth. It alleges that he was discharged as a bus driver in 1979 by Centro, Inc. CNY (Centro) because of his long-standing membership in Amalgamated Transit Union, Local 580 (ATU). It further alleges that ATU discriminated against him in representing him in connection with that discharge.

The Director of Public Employment Practices and Representation (Director) dismissed the charge on the ground that the events complained about occurred in 1979, more than four years before the charge was filed, while §204.1(a)(1) of our Rules of Procedure permits the filing of an improper practice charge only within four months of the conduct complained about. He further determined that the charge was defective in that it did not allege facts to support his statement that the conduct of Centro and ATU was discriminatorily motivated although Rule 204.1(b)(3) requires the allegation of relevant facts.

The matter now comes to us on Mr. Ensworth's exceptions. We have examined those exceptions carefully and find that they do not address the basis of the Director's decision and provide us with no grounds for reversing it.

ACCORDINGLY, WE AFFIRM the decision of the Director, and WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: April 11, 1984
New York, 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 #3A-4/11/84

ARMONK CENTRAL SCHOOL DISTRICT,

Employer,

-and- CASE NO. C-2627

BYRAM HILLS ADMINISTRATORS 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 Byram Hills Administrators 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 principals, assistant principals, director of music, director of health and physical education, and director of computer science.

Excluded: Superintendent, assistant superintendent for business, director of personnel and special services.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Byram Hills Administrators 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: April 11, 1984
New York, 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

#3B-4/11/84

SWEET HOME CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2717

SWEET HOME ASSOCIATION OF PROFESSIONAL EDUCATORS, NEA/NY,

Petitioner,

-and-

SWEET HOME EDUCATION ASSOCIATION, NYSUT-AFT,

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 Sweet Home Education Association, NYSUT-AFT 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 certifiable personnel duly appointed by the Board of Education, serving at least 50% of the regular school day in the classroom or in direct servics to the children including teachers, librarians, nurse-teachers, attendance teachers, psychologists, guidance counselors, instructional coordinators, speech correctionists, department chair-persons, athletic director, work study coordinator, long term substitutes.

Excluded: Adult education teachers, per diem substitute teachers and those other persons hired to aid and/or assist teachers, and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Sweet Home Education Association, NYSUT-AFT 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: April 11, 1984
New York, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#3C-4/11/84

In the Matter of

CHENANGO FORKS CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2734

CHENANGO FORKS TEACHERS ASSOCIATION,
NYSUT, AFT, AFL-CIO,

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 Chenango Forks Teachers Association, NYSUT, AFT, 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.

Unit: Included: Professional teaching faculty in the Chenango Forks Central School District including long-term substitutes.

Excluded: Superintendent, Assistant Superintendent(s), Principals, Assistant Principals and itinerant substitutes.

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

DATED: April 11, 1984
New York, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member